Y 4.J 89/1 : 103/85

TREATMENT OF JUVENILES IN THE CRIMINAL JUSTICE SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON
CRIME AND CRIMINAL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JULY 14, 1994

Serial No. 85

GOV'T. DEPOSITORY
MAR 23 1995
HAMPDEN LAW LIBRARY

RECEIVED
APR 01 1995
BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

KF
9799
.T71
1995

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
85-752 WASHINGTON : 1995

Y 4.J 89/1 : 103/85

TREATMENT OF JUVENILES IN THE CRIMINAL JUSTICE SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON
CRIME AND CRIMINAL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JULY 14, 1994

Serial No. 85

GOV'T. DEPOSITORY
MAR 2 3 1995
RECEIVED
APR 0 1 1995
BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT
KF
8789
.T71
1995
HAMPDEN LAW LIBRARY

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
85-752 WASHINGTON : 1995

KF 9788 .T71 1995
United States. Congress.
House. Committee on the
Treatment of juveniles in
the criminal justice system

DON EDWARD
JOHN CONYEI
ROMANO L. M
WILLIAM J. H
MIKE SYNAR,
PATRICIA SCH
DAN GLICKMA
BARNEY FRAN
CHARLES E. S
HOWARD L. BI
RICK BOUCHE
JOHN BRYANT
GEORGE E. SA
CRAIG A. WAS
JACK REED, R
JERROLD NAD
ROBERT C. SC
DAVID MANN,
MELVIN L. WA
XAVIER BECEI

DATE DUE

DON EDWARD
JOHN CONYEI
ROMANO L. M
DAN GLICKMA
GEORGE E. SA
CRAIG A. WAS
DAVID MANN,

HAMPDEN LAW LIBRARY
50 State St, P.O. Box 559
Springfield, MA 01102-0559
(413) 748-7923

DEMCO

CONTENTS

HEARING DATE

Page

July 14, 1994 1

OPENING STATEMENT

Schumer, Hon. Charles E., a Representative in Congress from the State of New York, and chairman, Subcommittee on Crime and Criminal Justice 1

WITNESSES

Krisberg, Dr. Barry, president, National Council on Crime and Delinquency 121

Loughran, Edward J., director, Robert F. Kennedy Memorial, National Juvenile Justice Project 145

Mitchell, David B., judge, Circuit Court for Baltimore City 90

Murphy, Patrick, Cook County public guardian 75

Reinharz, Peter, chief, Family Court Division, New York City Law Department 40

Thornberry, Dr. Terence P., professor, School of Criminal Justice, and director, Rochester Youth Development Study, the University at Albany 121

Wallace, Jo-Ann, director, Public Defender Service for the District of Columbia 55

Wilson, John J., Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice 5

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Krisberg, Dr. Barry, president, National Council on Crime and Delinquency: Prepared statement 133

Loughran, Edward J., director, Robert F. Kennedy Memorial, National Juvenile Justice Project: Prepared statement 147

Mitchell, David B., judge, Circuit Court for Baltimore City: Prepared statement 92

Murphy, Patrick, Cook County public guardian: Prepared statement 77

Reinharz, Peter, chief, Family Court Division, New York City Law Department: Prepared statement 43

Thornberry, Dr. Terence P., professor, School of Criminal Justice, and director, Rochester Youth Development Study, the University at Albany: Prepared statement 118

Wallace, Jo-Ann, director, Public Defender Service for the District of Columbia:

Length of incarceration for releases from the California Youth Authority and California Department of Corrections, 1992 115

Prepared statement 57

Wilson, John J., Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice: Prepared statement 9

APPENDIX

Material submitted for the hearing 165

TREATMENT OF JUVENILES IN THE CRIMINAL JUSTICE SYSTEM

THURSDAY, JULY 14, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2226, Rayburn House Office Building, Hon. Charles E. Schumer (chairman of the subcommittee) presiding.

Present: Representatives Charles E. Schumer, Romano L. Mazzoli, F. James Sensenbrenner Jr., and Steven Schiff.

Also present: Representative Robert Scott.

Staff present: David Yassky, counsel; Melanie Sloan, assistant counsel; Rachel Jacobson, secretary; Victoria Shabo, secretary; and Andrew Cowin, minority counsel.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Mr. SCHUMER. The hearing will come to order. The Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, film, photography or other similar methods. In accordance with committee rule 5, permission will be granted unless there is objection.

Without objection.

Good morning, everybody. Today we are here to discuss one of the most serious problems affecting our criminal justice system, which is juvenile crime.

By reading newspaper headlines or watching the evening news, you would think we were living in Clockwork Orange come to life. Neither Stanley Kubrik nor Steven King could have dreamed up more heinous crimes or more vicious killers than those stalking our streets today.

Just last month in Brooklyn, half a mile from my home, a 15-year-old killed a high school drama teacher for his bike; the teacher was shot in the back while trying to get away.

Last year in New York, a 15-year-old looked out his apartment window, pointed his .22 and fired, killing a 64-year-old grandmother, a pillar of the community, who just happened to be passing by.

Last December in Texas, five gang members shot at some teens who would not let them pass on a mall escalator. In the ensuing hysteria, a man eating in the food court was killed.

And in 1992, a Florida teenager shot three people and stabbed another person in a fast food restaurant leaving one person dead. The reason he gave: He had "a boring day."

On a highway in Washington, DC, a 19-year-old leaned out of his car window and shot and killed a woman traveling in another car. He explained: I felt like killing somebody.

Kids will kill for leather jackets, for tennis shoes, for jewelry, and for no reason at all.

The statistics are frightening. Close to one-fifth of all violent crime, one-fifth, is committed by kids under 18. Between 1987 and 1992, the number of arrests of juveniles increased by 150 percent, twice the increase for persons 18 years of age and older. Even more alarmingly, juvenile arrest for murder increased by 85 percent, compared with 21 percent for those 18 and older.

The estimated 122,900 violent crime arrests of juveniles in 1991 was the highest number in history, with 23,400 arrests for murder, 6,300 arrests for forcible rape, 44,500 arrests for robbery, and 68,700 arrests for aggravated assault.

Juveniles' use of guns in homicides increased from 64 percent to 78 percent between 1987 and 1991. During this time juvenile arrests for weapons violations increased 62 percent. In 1991, the nearly 50,000 juvenile weapons arrests accounted for more than one in five weapons arrests.

In 1990, one in five high school students reported carrying a weapon somewhere within the past month. One in twenty had carried a gun.

Now, we can all remember a time when a juvenile delinquent was a kid who skipped school, smoked cigarettes, or maybe threw eggs at cars.

Today, juvenile delinquents are carjackers, rapists and murderers.

Our laws need to reflect the problems we are facing, and it has become apparent that our method of dealing with juveniles who break the law isn't working. Laws originally designed to deal with kids charged with graffiti are now being applied to kids charged with murder.

Our society must appropriately punish juveniles who commit serious crimes. Kids, like adults, need to understand that if you commit a crime, you will do time.

But what sentences are reasonable for juveniles who commit serious crimes? Will longer sentences actually deter juveniles from committing crimes? Should a 12-year-old who commits armed robbery receive the exact same sentence as a 24-year-old?

Should a 15-year-old be convicted under a three-time-loser provision spend the rest of his life in jail?

These are questions for which we need answers. And in a series of upcoming hearings we will try to answer them. But I do know that punishment alone will not solve the problem. We need to remember that most juveniles who commit crimes will end up back on the streets. Therefore, we have to learn how effectively to rehabilitate these kids. We can't leave them to prey upon new victims.

I don't believe that people, especially young kids, are not the rehabilitable. We just don't know what works now.

So we have to explore the reasons why juvenile crime is burgeoning. What are we doing wrong as a society that we are raising 12- and 13-year-old murderers? How do we determine which children are at risk of becoming criminals and how do we stop it?

Any solution to the juvenile crime problem must be double-edged: We need to prevent juvenile crime from occurring in the first place, and then when a crime does occur, we need to apply appropriate sanctions both to keep dangerous criminals off the streets and to deter others from committing similar crimes.

We have convened today's hearing so that the experts from around the country can advise us as to how we should address the Nation's juvenile crime problem. I hope the information we glean from these experts will allow us to create smart, thoughtful, and workable legislation to reform our laws as they relate to juveniles.

I will close on a note of urgency. The statistics I mentioned earlier are terrible, but they are nothing compared to what we may expect to see in the future if we do not gain control of this problem.

By the year 2005, the number of 15- to 19-year-olds, the most violence-prone age group, will increase by 23 percent. We need to contain the juvenile crime problem now, before we create another, larger generation of young criminals. With this hearing, we hope to begin to tackle this problem.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I want to commend Mr. Schumer and the majority staff for putting together this important hearing on juvenile justice and for assembling such an impressive group of witnesses. We should certainly be concerned about the growing number of children who commit crimes, and the outdated justice system that deals with them.

Nevertheless, I am a bit apprehensive. I get the feeling that sometime after this testimony, maybe not tomorrow or maybe not next week, but at some point someone will draft Federal legislation purportedly aimed at solving the problem. If we have learned one thing during the 30-year failure of Great Society programs, it is that Congress doesn't solve social problems, it makes them worse. That is why I introduced a crime bill that will cut the personal income tax by 2 percent and send that money, about $55 billion over the next 5 years, back to the States. The States can spend the money on cops, prisons, prosecutors, or they can rebate the taxes back to the taxpayers to use as they see fit.

When it comes to crime we should ask ourselves this question: Who knows better how to stop crime, the local cops and prosecutors, or a bunch of Congressmen sitting in Washington? The answer is obvious, and it isn't Congress. So even if this distinguished panel comes up with what seems like excellent ideas, and even if we all agree that they are excellent, I would resist putting them into Federal law. Ours is a big country and as distinguished as the witnesses are, and as intelligent as some Congressmen may be, we would still be better off letting the people throughout America and the thousands of towns and cities and counties and in the 50 States figure out how best to protect themselves.

Most important, we should cut the size of this bloated, overgrown Federal Government so that they can afford to protect themselves.

Thank you.

Mr. SCHUMER. Thank you, Mr. Sensenbrenner.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. I want to join my ranking member, Congressman Sensenbrenner, in commending you for holding this hearing. I agree that we can expect to hear from a very impressive group of witnesses here today on this important issue.

I have to, however express some concerns of my own. The first is, you made numerous references, Mr. Chairman, in your opening remarks to the use of firearms in crime. This suggests to me the importance of holding a hearing that I have requested of you since November on the subject of the Federal Government enforcing current gun control laws.

I think not only this administration, but the previous two administrations, have not been strong enough in that enforcement, and I can't understand why my request that—especially to you as a gun control proponent—has gone unanswered in all of these months.

Second of all, I have a concern that although holding a hearing is valid, I am really becoming concerned that Congress is becoming nothing more than a discussion society and a photo opportunity session on important issues. I think the testimony will come out that the Federal Government basically does very little in the area of juvenile crime prosecutions, and our role may well be to support the local government in this area. The pending crime bill, both the House and the Senate versions, include important support for State and local government on this issue, as Congressman Sensenbrenner has just emphasized, and has included an expansion of the Federal role to work together.

But the crime bill isn't happening. We have not passed a crime bill in the 3½ years that I have been on the Judiciary Committee, despite all of the carnage that is happening all around us.

And I do not want to take away from the importance of a hearing. I don't want to suggest that a hearing has no place. I think it does. But to have a series of hearings and to believe that that in some way, all by itself, is accomplishing something, I think is deceiving ourselves and, worst of all, deceiving the country.

Thank you, Mr. Chairman. I yield back.

Mr. SCHUMER. I thank the gentleman.

Just two brief things. First, as I mentioned to the gentleman, I believe our staffs are talking. I am interested in that hearing, I think it is a good idea. I had said to the gentleman a long time ago we would do it after the crime bill is finished, and hopefully the crime bill will be finished by the August recess; but we will have the hearing by the August recess regardless as to whether the crime bill passes or not.

The second thing I would say is that if we pass this crime bill, we will have had the Federal Government do more to fight crime than at any time in history. To pass the crime bill, we held a series of hearings on all of the bill's different ramifications. I believe that helped us get a crime bill when in the past as the gentleman mentioned, no one could pass a crime bill. I hope that we can do the same in the juvenile justice context.

The one place I have somewhat of a different thrust than my colleagues is that, I don't think my constituents care who accepts or

solves the crime problem, the local, State, or Federal governments. The localities who are responsible for 95 to 98 percent of the crime fighting have not been doing the greatest job. Otherwise, our constituents wouldn't list crime as the No. 1 issue.

I personally have no problem, seeing that the Federal Government gets fully involved. It drives me crazy to know that people are being mugged out there yet here in Washington we are having arguments where people say we shouldn't do it, because someone else will do it, despite the fact that we know darn well that someone else is not fixing the problem. So that is just a different point of view.

I would like now to call our first witness today, John Wilson. Please come forward.

Oh, Mr. Scott, would you like to make an opening statement?

Mr. SCOTT. No, thank you, Mr. Chairman.

Mr. SCHUMER. OK. Our first witness today will be John J. Wilson. He is the Acting Administrator of the Office of Juvenile Justice and Delinquency Prevention of the Justice Department.

Mr. Wilson, your entire statement will be read into the record, and you may proceed as you wish.

STATEMENT OF JOHN J. WILSON, ACTING ADMINISTRATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPARTMENT OF JUSTICE

Mr. WILSON. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, I am pleased to have this opportunity today to share with the subcommittee some of my views on the problem of juvenile crime in our country and the response of our juvenile and criminal justice systems. I also want to address the measures that the Department of Justice is taking that are designed to reduce violence by and against our Nation's youth, and to improve the juvenile justice system.

I have submitted my full statement for the record with three documents which I would like to have included in the record. They are OJJDP's comprehensive strategy to address serious violent and chronic delinquency, a draft of the National Council on Crime and Delinquency's report entitled, "Graduated Sanctions for Serious, Violent and Chronic Juvenile Offenders," and an OJJDP bulletin on the subject of "How Juveniles Get to Criminal Court."

At this time, I will briefly summarize my statement and then would be pleased to respond to questions.

Today, the juvenile justice system in the United States stands at a crossroads. The public is deeply concerned over increasing juvenile violence. We are also seeing sharp increases in juvenile victimization. This is particularly significant because the research clearly illustrates a link between juvenile victimization and subsequent violent delinquency.

The chairman has noted some alarming juvenile crime statistics, and I am going to briefly mention some others.

The FBI's 1992 Uniform Crime Report indicates that juveniles accounted for 2.3 million arrests or 16 percent of the total arrests. They accounted for one of every eight violent crimes; this includes homicides, rapes, robberies, and aggravated assaults.

What is scaring the American public, as the chairman noted, is that the violence rate has increased significantly over the past 5 years, up 47 percent overall between 1988 and 1992 with the leading crime being murder, which is up 51 percent for juveniles. Yet it is important to remember that most youths are law-abiding, solid citizens. Less than one-half of 1 percent of all 10- to 17-year-olds in the United States were arrested for a violent crime in 1992.

It is a small core, about 15 percent of high-risk youth, who account for 75 percent of the serious and violent juvenile crime and on whom we need to focus.

In 1992, 1 of every 13 juveniles aged 12 to 17 was a violent crime victim, accounting for 1.55 million victimizations, a 23.4-percent increase over 1987. These youth, who represent only 10 percent of the population, account for 25 percent of the violent crime victims. In addition, an estimated 2.9 million children were reported abused or neglected in 1993. Studies by Thornberry and Widom confirm that abused children are twice as likely to become delinquent offenders and that juveniles exposed to physical violence begin offending earlier and are more involved in violent offending.

In 1993, it was estimated that over 1,300 children died as a result of child abuse or neglect, and as a member of the U.S. Advisory Board on Child Abuse and Neglect, I am sad to say that the subject of our report for this year, on which we are currently holding hearings around the country, is child fatalities and child fatality review teams.

Why have violent crimes committed by and against juveniles increased in recent years? The first factor that I believe is significant is the negative impact of a variety of social changes that have occurred over the past two decades. It is reflected in the withdrawal of juvenile resources and services from less affluent communities and individuals in American society. It is reflected by increases in the number of children living in poverty, by decaying cities with inadequate health and educational systems, substandard housing, and a lack of job training and employment opportunities. Services to support families and youth are often the first to be cut from State and local budgets.

A second factor is family demographics, including a rampaging divorce rate and more and younger unmarried mothers. The trend toward single-parent households primarily headed by young women and the great majority of whom must work full time to make ends meet, has resulted in children who are given less parental attention and greater opportunities for engaging in at-risk behavior.

Third, the number of firearms on our streets has increased markedly with guns being freely available to juveniles.

Fourth, we are seeing an increased presence of youth gangs, even in smaller communities, around the country.

And the fifth factor is drugs. Juvenile arrests for heroin and cocaine offenses are up dramatically, particularly from minority youth.

States have reacted in a number of ways. A large number of juveniles are being transferred or waived to the criminal justice system. An estimated 9,700 juvenile delinquency cases were transferred to criminal court through judicial waivers in 1991; another

17,000 cases were direct-filed in criminal court by prosecutors in 1990.

In addition, some 176,000 cases involving youth under the age of 18 are tried in criminal court each year because they are defined as adults under State laws that establish an age less than 18 as the upper limit of original juvenile court jurisdiction.

Finally, a few thousand more juveniles are estimated to be tried in criminal court each year under excluded offense statutes.

While recent legislative trends indicate that the States are increasing their use of waiver and transfer mechanisms as a means of getting tough on juveniles, there is a danger of losing sight of the rehabilitative goals and capabilities of the juvenile justice system. The trend to sending a larger number of juveniles to the criminal justice system should be of concern because of its potential impact on our ability to rehabilitate many thousands of young people who can become productive members of our society.

I am concerned that waivers and transfers to criminal court of large numbers of juveniles is a practice that may not be serving its intended purposes. The wholesale transfer of juveniles to criminal courts may not, in fact, offer the public protection in the long run or result in increased accountability for juvenile offenders. My full statement cites a number of studies on this issue.

States have experimented with a variety of responses to serious, violent, and chronic delinquency. The juvenile justice system in this country continues to be overburdened and lacks sufficient resources to provide basic delinquency prevention, treatment, and rehabilitation services to kids. Until those resources are available, States may need to consider a dual approach to serious, violent, and chronic offenders, continuing the practice of transferring those serious and violent offenders for whom there are no programs or services while a system of graduated sanctions and a continuum of program options is being developed.

While I believe there are no quick fixes to escalating juvenile violence, we can address this problem systematically and successfully. The Clinton administration has called for a balance among crime prevention, enforcement, and corrections in the crime bill. The Attorney General has stressed the need for early intervention, calling for family preservation programs, preventive medical care for children and pregnant women, Educare programs for children of working parents, conflict resolution and drug education programs in public schools, full service schools for at-risk youth, and truancy prevention programs. The focus is on preventing youth crime and violence from beginning its deadly cycle.

In line with this approach, OJJDP has developed a comprehensive strategy to address serious, violent, and chronic delinquency. The strategy assists and empowers families and core societal institutions to help children develop to their full potential and to prevent delinquency. It also establishes a broad spectrum of graduated sanctions that provide accountability and a continuum of services that respond to the needs of each juvenile who has contact with the juvenile justice system.

Finally, the strategy is designed to control that small number of serious, violent, and chronic juvenile offenders who fail to respond

to sanctions or commit violent crimes that require incapacitation in order to protect society.

The strategy clearly recognizes that offenders who commit violent crimes or fail to respond to treatment may have to be referred to criminal court. This is an option, however, that should be reserved for that small group of offenders who are inappropriate candidates for juvenile justice system programs. And there are programs that work, some of which are detailed in NCCD's draft report that I have submitted for the record. I am sure Dr. Krisberg will tell you more about NCCD's work in identifying these programs and about many others that show promise to rehabilitate youth.

OJJDP is working hard to identify these programs and provide this information to State and local government, private nonprofit agencies, so that these kinds of effective programs can be replicated at the local level. We believe that implementation of a comprehensive strategy at the State and local levels will prevent delinquency and ensure that the juvenile justice system can respond effectively to each juvenile offender's needs. By holding youth accountable for their actions, we can decrease the likelihood that they will become chronic offenders and tomorrow's criminal offenders. However, a long-term commitment to the implementation of a comprehensive approach to this problem is required if we are to be successful. There are no quick fixes.

We look forward to working in partnership with the subcommittee and with State and local officials throughout the Nation to address serious and violent juvenile crime in a comprehensive manner. I thank you, Mr. Chairman, for the opportunity to be here today, and I would be pleased to respond to any questions that you or the other members of the subcommittee might have.

[The prepared statement of Mr. Wilson follows:]

Department of Justice

STATEMENT

OF

JOHN J. WILSON
ACTING ADMINISTRATOR
OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

BEFORE

THE

SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

THE TREATMENT OF JUVENILES IN THE CRIMINAL JUSTICE SYSTEM

ON

JULY 14, 1994

Mr. Chairman, I am pleased to have this opportunity to share with this Subcommittee some of my views on the problem of juvenile crime in our country and the responses of our criminal and juvenile justice systems. I also want to address the measures that the Department of Justice is taking that are designed to reduce violence by and against our Nation's youth and improve the juvenile justice system.

Today, our juvenile justice system stands at a crossroads, with only 5 short years until we celebrate its 100-year anniversary. How we respond to public concern over serious, violent, and chronic juvenile crime will determine the juvenile justice system's role in America's response to crime for years to come. We need to act now to map out and implement the steps needed to realize the promise of the juvenile justice system and the children it serves, so that both will be alive and healthy for that historic event.

First, I'd like to present a national portrait on the crisis by and against juveniles, which will provide some context to the daily media accounts and public perceptions about the nature and extent of youth crime and victimization in our country.

These statistics are intended to accomplish two purposes. First, I want to clearly show the seriousness of the violent juvenile crime problem. However, I also want to emphasize that we need to keep this problem in perspective. Second, I want to illustrate the extent of juvenile victimization, both to illustrate that juveniles are disproportionately the victims of violent crime and because of the link between juvenile victimization and subsequent delinquency.

NATIONAL PORTRAIT OF JUVENILES AS OFFENDERS AND VICTIMS

First, let's look at the statistics concerning juveniles as perpetrators.

- According to the FBI's 1992 Uniform Crime Reports data, juveniles commit one out of every eight violent crimes, including homicides, rapes, robberies, and aggravated assaults, in the United States. This 13 percent figure has remained essentially unchanged since 1965.[1]

- Law enforcement agencies in 1992 made 2.3 million arrests of persons below the age of 18, representing 16 percent of all arrests, both adult and juvenile.[2]

- There were an estimated 129,600 violent crime index arrests of juveniles in 1992—3,300 for murder; 6,300 for forcible rape; 45,700 for robbery, and 74,400 for aggravated assault. Juvenile violent crime arrests accounted for 18 percent of all violent crime arrests made by police agencies.[3]

  In the 10 year period between 1983 and 1992, all violent crime arrests increased 54%. 81% of this increase was attributable to adults; 19%, to juveniles.[4]

  Juveniles' contribution to the 1983-1992 increase came in the latter 5 years of the 10 year period: From 1988 to 1992, the number of juvenile violent crime arrests increased 47% (murder--51%; robbery--50%; aggravated assault--49%; rape--17%). During this period adult violent crime arrests increased 19% murder--9%; robbery--13%; aggravated assault--23%; and rape 3%.[5]

- Yet a very small proportion of juveniles are represented in violent crime arrests. During the last census year, 1990, for example, less than half of one percent of all 10-17 year-olds in the United States were arrested for a violent offense.

- According to OJJDP's Causes and Correlates Studies, about 15 percent of high- risk youth are responsible for about 75 percent of serious or violent crimes.[6]

These are the juvenile offenders on which the juvenile justice system needs to focus.

National data also document an increase in juvenile victimization:

- In 1992, 1.55 million violent crimes were committed against juveniles age 12-17—a 23.4 percent increase over the 1.26 million victimizations in 1987.[7]

- Although juveniles accounted for one-tenth of the population age 12 and over, nearly 1 in 4 violent crimes involved a juvenile victim in 1992.[8]

- Violent victimizations against juveniles accounted for 23 percent of the estimated 6.62 million victimizations in 1992. Juvenile victims accounted for almost one-fourth of the estimated 5.26 million assaults and one-fifth of the estimated 1.23 million robberies.[9]

- In a recently released Bureau of Justice Statistics study of 11 States and Washington, D.C., half of the women who reported they had been raped during 1992 were under the age of 18, and 16 percent were younger than 12.[10]

Child maltreatment in the family is another type of victimization:

- An estimated 2.9 million children were reported abused or neglected in 1993, with 1,300 children known to have died as a result of abuse or neglect.[11]

- Studies conducted by Thornberry and Widom confirm that abused children are at high risk for later involvement in delinquency, with about twice the rate of reported serious delinquency and twice the number of arrests compared with youngsters who were not maltreated. These studies also show that greater risk exists for violent offending when a child is physically abused or neglected early in life. Such a child is more likely to begin offending earlier and to be more involved in such offending than children who have not been abused or neglected.[12] Violence begets violence.

FIVE MAJOR REASONS FOR THE INCREASE IN JUVENILE CRIME

Mr. Chairman, these statistics clearly give rise to some serious questions about the nature and extent of violent crime in our country. Why has violent crime by and against juveniles been increasing? What can we do to stem this tide? As indicated by recent public opinion polls, violent crime is the number one concern of Americans today. First, let me address the factors that may explain increasing trends in juvenile violence.

The First Factor Is the Increasingly Negative Impact of Social Changes Over the Past Two Decades

A key change that I see is the loss of a sense of community in our States, cities, and towns. It is reflected in the withdrawal of financial resources and services that benefit the less affluent and the needy in American society. The number of children living in poverty has increased to 14.6 million in 1992, 42 percent more than in 1976. These children account for approximately 40 percent of all Americans living in poverty. In 1992, 17 percent of white children lived in poverty, 47 percent of African-Americans, and 40 percent of Hispanics.[13] The poverty rate among American children is more than double the rate in any other industrialized country.[14]

At the same time, our decaying cities lack adequate health care and educational systems. These cities are marked by disparities between wealthy suburbs and inner cities, substandard housing, lack of job training and opportunity, and a dearth of services to support families and provide developmental programs for youth. Research clearly shows that residing in underclass communities correlates more strongly with juvenile violence than does the residents' race.[15]

The Second Factor Is Family Demographics

Increasing divorce and a growing birth rate among unmarried women, an increasing number of whom are children themselves, have combined to produce significant changes in the living arrangements of children. The U.S. divorce rate nearly tripled between 1960 and 1990, from 393,000 to 1,175,000 annually. At the same time, increasing numbers of unmarried women were having children. In 1960, only 1 birth in 20 was to an unmarried woman; by 1990, 1 in 4 births was to an unmarried mother.[16]

As a result of these trends, significantly more children now live in single-parent households. In 1970, 11.9 percent of all U.S. children lived with just one parent, compared to 1990 when 24.7 percent of all children lived with only one parent.[17]

The number of children living with a single parent who has never married also increased markedly, from four-tenths of 1 percent of American children in 1970, to 7.6 percent in 1990.[18]

Between 1970 and 1990, the percentage of white one-parent families increased from 10.1 percent to 22.6 percent. For African-Americans, the increase was from 35.6 percent to 60.5 percent.[19]

More and younger single parents, many of whom must work long hours to make ends meet, mean less consistent discipline and moral and spiritual guidance for children, more after school and evening hours without mom or dad, and more opportunities for involvement with drugs and alcohol, teenage sex, gangs, and delinquency. A reported 70 percent of the children who now come into juvenile court for delinquency are from families with one or no parents.

The Third Factor Is Firearms

You can buy a handgun, loaded, on the streets in most urban jurisdictions for less than $100. Assault rifles cost a bit more. As the number of firearms has escalated, many people—including juveniles—have begun to arm themselves for their own protection, as a means of settling disputes, or to commit crimes. A recent survey jointly funded by OJJDP and the National Institute of Justice found that 22 percent of male students in 10 inner-city high schools found that 22 percent of the students in 10 inner-city high schools possessed firearms. Of these, 53 percent borrowed them from family or friends, 37 percent bought them on the street, and 35 percent purchased them from a family member or friend.[20] Disputes that used to be settled with fists are now settled with guns—at a staggering cost. Juveniles' use of guns in homicides increased from 65 to 78 percent between 1987 to 1991, while arrests for weapons violations increased 62 percent.[21] 1992 U.C.R. data show that in one year weapons-

related arrests were up 4.8 percent for adults 18 and over, up 16.1 percent for youth under 18, and up 23.2 percent for children under 15.[22] Media violence, which desensitizes us to the pain of violence, injury, and death, contributes to the idea that guns and other lethal weapons can settle disputes.

The Fourth Factor Is Gangs

The seriousness of the youth gang problem has increased in recent years. Gang violence has made dramatic inroads from large cities to small towns across the country. A National Institute of Justice study estimated that in 1991 there were nearly 5,000 gangs in the United States, whose members numbered nearly 500,000.[23] Indications are that youth gangs are becoming more violent, particularly those engaged in street-level drug-trafficking. The escalation of juvenile gang violence is a reality in many communities but can be successfully addressed by one determined to stop it.

Why do children join gangs? Because gangs are family substitutes. They provide the support, nurturing, acceptance, and protection that many children do not find at home.

The Fifth Factor Is Drugs

Juvenile arrest rates for heroin and cocaine have increased dramatically—more than 700 percent between 1980 and 1990. For African-American youth, the rates increased more than 2000 percent compared to 250 percent for white youth.[24] This accounts, in large measure, for increased detention and confinement of minority youth, a rate which rose from 53 to 63 percent between 1987 and 1991.[25] Experts estimate that over 100,000 babies each year are exposed to illicit drugs in utero, babies who will have an additional, and mostly unknown, handicap which may prevent them from leading a productive life.

WHAT SHOULD WE DO?

First, we must provide sanctions that fit the crime. Juveniles, as well as adults, must understand that there is no justification for putting a gun against someone's head. Such juveniles must be held responsible for their actions.

Second, we must recognize that the juvenile justice system is overburdened and lacks sufficient resources to provide basic delinquency prevention, treatment, and rehabilitation services to kids—a system that is then called a failure when juveniles become serious, violent, or chronic offenders. The main reason for the system's apparent failure is that is has never been given a fair chance to work. Serious and violent juveniles' problems are multi-faceted, requiring comprehensive, interdisciplinary treatment, in a continuum of care. Juvenile justice system

opportunities to conduct comprehensive needs assessments and provide the needed variety of treatment approaches have been rare.

I believe that the growth of juvenile violence and delinquency can be addressed successfully, but that there are no quick fixes. It will take hard work, resources, commitments from individuals, communities, institutions, public and private agencies, governments, and foundations, and a willingness to sit down together to identify needs and find solutions to problems. We must recognize that we are all in it for the long haul.

While the Federal Government cannot by itself solve these complex problems, it <u>can</u> provide direction, leadership, and guidance to those ultimately responsible for reducing juvenile crime and improving the juvenile justice system. For this reason, the Clinton Administration has urged that a balance be achieved among crime prevention, enforcement and corrections in the Crime Bill. Regarding delinquency prevention and early intervention, the Attorney General has called for a national agenda for children to address juvenile violence and juvenile victimization on a long-term basis. She prefers to view a child's life as a continuum, necessitating an age-graded community support system to supplement and assist the family at every stage of the child's life. This continuum of services might include:

1. Family preservation programs, including a major effort to reduce teen pregnancy;

2. Preventive medical care for all children and pregnant women;

3. Educare programs that provide both child care and educational readiness opportunities for children of working parents;

4. Conflict resolution and drug education and prevention programs in all public schools to teach children how to resolve conflicts peacefully and resist the use of drugs;

5. Development of full service schools to provide comprehensive health and social services to at-risk youth. These services should include school-to-work programs to provide employment readiness, testing, training and work experiences suited to our technological society;

6. Truancy prevention programs that seek to constructively identify and address the causes of poor school attendance and prevent children from dropping out of school; and finally,

7. Fair, reasonable sanctions that fit the crime, no matter how old the offender is.

The Department of Justice is working closely with the Departments of Health and Human Services, Housing and Urban Development, Labor, Education, and other Federal departments and agencies, including the Office of National Drug Control Policy, to develop solutions to youth violence. In partnership with State and local governments, the Department of Justice is addressing what the Attorney General has called, "the most serious crime problem facing America today--youth violence."

OJJDP'S COMPREHENSIVE STRATEGY

OJJDP, in conjunction with Department policy officials, has developed "A Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders" (1993, copy attached). Our Strategy is designed to prevent delinquency in the first place, to ensure that young people who do become involved in delinquency are both held accountable for their actions and have opportunities for rehabilitation, and to identify and control the small percentage of juvenile offenders who account for the most violent and serious crimes. Ensuring the public safety must be the first priority.

We have identified six key principles for preventing and reducing at-risk behavior and serious and violent delinquency. These are:

- First, we must strengthen families in their role as their children's first and primary teachers in providing guidance, discipline, and sound values.

- Second, we must empower core social institutions--schools, churches, and community organizations--to provide clear community values, support children and families, and help children develop to their full potential.

- Third, we must promote prevention strategies that address risk factors for delinquency and enhance protective factors that bond children to positive community values and adult role models.

- Fourth, we must intervene immediately with juveniles and their families when delinquent behavior first occurs.

- Fifth, we must establish a broad spectrum of graduated sanctions that provide accountability and a continuum of services that responds to the needs of each juvenile.

- Sixth, we must identify and control the small segment of serious, violent, and chronic juvenile offenders in order to ensure the public safety.

OJJDP's comprehensive strategy recognizes that prevention is the most cost-effective means of dealing with delinquency. As the Attorney General has said many times, we can't wait to intervene in a young person's life when they're already half grown and have already developed destructive behaviors. We have to start early in a child's life—from ensuring that a pregnant mother receives adequate prenatal care to providing support for that family as the child grows and develops to intervening immediately when delinquent behavior first occurs.

Most delinquency prevention efforts have been unsuccessful because of their negative approach: They attempt only to keep juveniles from misbehaving. The positive programs our comprehensive strategy recommends emphasize opportunities for healthy social, physical, and mental development. Our approach first identifies risk factors that contribute to the development of a delinquency problem, then develops a way to ameliorate those problems. We want to encourage positive individual characteristics, such as a resilient temperament and positive social orientation, and support local programs through which communities can reinforce positive factors.

At the same time, however, we must have a means of intervening in delinquent behavior. Even though the juvenile justice system is overwhelmed with juvenile offenders, we must let young people know that the juvenile justice system is not a paper tiger. We must let them know that if they break the law, they will be held accountable for their actions.

OJJDP's comprehensive strategy combines accountability and sanctions with increasingly intensive treatment and rehabilitation as the juvenile offender engages in more and more serious crimes. The purpose of graduated sanctions is to stop the juvenile's slide into criminality by stimulating law-abiding behavior as early as possible.

To fit the offense, graduated sanctions must encompass a broad range of nonresidential and residential alternatives. Programs will need to use Risk and Needs Assessments to determine the appropriate placement for the offender. Together, risk and needs assessments will help to allocate scarce resources more efficiently and effectively. A system of graduated sanctions requires a broad continuum of options. The family must be integrated into treatment and rehabilitative efforts at each stage of this continuum. Aftercare must be a formal component of all residential placements, actively involving the family and the community in supporting and reintegrating the juvenile into the community.

First-time non-serious offenders, or those who fail to respond to intervention programs, must be targeted for system intervention based on their probability of becoming more serious or chronic in

their delinquent activities. We call this level of intervention "immediate." Non-residential community-based programs, including prevention programs for at-risk youth, may be appropriate for many of these offenders.

Two categories of offenders are candidates for "intermediate" sanctions. The first category is those offenders who are inappropriate for immediate intervention; that is, first-time serious or violent offenders. The second category is those offenders who fail to respond to immediate sanctions as evidenced by re-offending, such as repeat property offenders or drug-involved juveniles. Sanctions for these two categories may be residential or nonresidential.

Secure corrections may be required for those serious, violent, and chronic juvenile offenders who require enhanced security to protect the public, who require secure sanctions to hold them accountable, or who require a structured treatment environment. Large congregate-care juvenile facilities have not proven to be particularly effective in rehabilitating juvenile offenders; therefore the establishment of small community-based facilities to provide intensive services in a secure environment offers the best hope for successful treatment of those juvenile who require a structured setting.

CRIMINAL COURT HANDLING OF JUVENILE OFFENDERS

I'd like to discuss briefly the waiver and transfer of juvenile offenders to criminal court jurisdiction. The offender who commits a homicide or other heinous crime and the serious or chronic offender who is unresponsive to system sanctions and treatment opportunities, is clearly a candidate for transfer to criminal court. OJJDP's Comprehensive Strategy emphasizes that waiver and transfer mechanisms should, however, be used judiciously and when circumstances clearly justify criminal sanctions. I am concerned that waivers and transfers to criminal court of large numbers of non-violent juveniles is a practice that may not be serving its intended purpose of enhanced public safety. The mere transferring of larger numbers of juveniles to criminal courts may not offer more public protection, more protection of juveniles from physical harm, more punishment of juveniles, or long-term rehabilitation of juvenile offenders, than would a very targeted practice of transferring only the most serious and violent juvenile offenders.

All States allow juveniles to be tried as adults in criminal court under certain circumstances. A juvenile's case can be transferred to criminal court for trial in one of three ways--judicial waiver, prosecutorial discretion, or statutory exclusion from juvenile court jurisdiction. In any given State, one, two, or all three transfer mechanisms may be in place.

Judicial waiver. In all States except Nebraska and New York, juvenile court judges may waive jurisdiction over a case and transfer it to criminal court. In many States, statutes limit judicial waiver by age, offense, or offense history. Often statutory criteria, such as the juvenile's amenability to treatment, must also be considered.[26]

An estimated 9,700 juvenile delinquency cases were transferred to criminal court by judicial waiver in 1991.[27]

Judicially waived cases constituted 1.5% of the cases formally processed in juvenile courts in 1991. Drug cases were more likely to be judicially waived than those in other offense categories.[28]

Prosecutorial discretion. In some States, prosecutors are given the authority to file certain juvenile cases in either juvenile or criminal court under concurrent jurisdiction statutes. Thus, original jurisdiction is shared by both criminal and juvenile courts. Prosecutorial discretion is typically limited by age and offense criteria. Often concurrent jurisdiction is limited to charges of serious, violent, or repeat crimes. Juvenile and criminal courts often share jurisdiction over minor offenses such as traffic, watercraft, or local ordinance violations, as well.

There are no national data at the present time on the number of juvenile cases tried in criminal court under concurrent jurisdiction provisions. Our best estimate is about 17,000 cases were "direct filed" in criminal court in 1990.[29]

Statutory exclusion. Legislatures transfer large numbers of young offenders to criminal court by statutorily excluding them from juvenile court jurisdiction. Although not typically though of as "transfers," large numbers of youth under age 18 are tried as adults in the 11 States where the upper age of juvenile court jurisdiction is lower than 18. Nationwide, an estimated 176,000 cases involving youth under the age of 18 are tried in criminal court each year because they are defined as adults under State law.

Many States exclude certain serious offenses from juvenile court jurisdiction--some also exclude juveniles who have been previously waived or convicted in criminal court. State laws typically also set age limits for excluded offenses. The serious offenses most often excluded are murder (and other capital crimes) and other offenses against persons. Several States exclude juveniles charged with felonies if they have prior felony adjudications or convictions. Minor offenses, such as traffic, watercraft, fish or game violations, are often excluded from juvenile court jurisdiction as well. In many States juveniles tried in criminal court may receive dispositions involving either criminal or juvenile court sanctions. There are no national data

at the present time on the number of juvenile cases tried in criminal court as a result of these types of statutory exclusions. The number is believed to be a few thousand each year.

Let us examine more closely what happens when a juvenile is waived or transferred to criminal court.

When a young offender is charged with a serious offense, has a lengthy record of prior offenses, or appears unamenable to rehabilitation in the juvenile justice system, responsibility for handling the case is sometimes transferred to the criminal court. The methods used to try juvenile as adults in criminal court vary with State law. In many States, these laws were modified during the 1980s and 1990s to move more juvenile offenders into the adult system.

Since the very first juvenile courts were established by State legislatures during the early 1900s, the boundary between juvenile and criminal court has always been a penetrable one. Some States have permitted juvenile offenders to be transferred to criminal court since before the 1920s.

Traditionally, the decision to transfer a youth to criminal court was made by a juvenile court judge and was based upon the individual circumstances in each cases. Beginning in the 1970s and continuing through the 1990s, however, there has been a large increase in legislative actions that moved young offenders into criminal court without the case-specific assessment offered by the juvenile court process. In at least 25 States, laws have been enacted that automatically place certain types of youthful offenders in criminal court. In addition, prosecutors in at least 12 States have the discretion to charge certain offenders either in juvenile or criminal court. Increasingly, transfer decisions are made by legislators and prosecutors rather than by judges.

The characteristics of young offenders transferred to criminal court often do not match the public's perception. According to statistics compiled by the National Center for Juvenile Justice, just 34% of the delinquency cases waived by juvenile court judges in 1992 involved a person offense as the most serious charge. Two-thirds of the judicially waived cases involved either a property offense (45%), drug law violation (12%), or public order offense (9%). This offense profile has changed little since at least the 1970s. White and Hamparian's 1978 national survey found that just 32% of judicial transfers involved violent offenses against persons, while 62% involved either property charges or public order offenses.[30]

Straightforward comparisons between dispositions in juvenile and criminal court are not always possible due to their procedural differences. Few studies have been conducted in this area. Most are not recent. However, several are noteworthy. Rand Corporation researchers examined court dispositions for a sample of cases that involved juveniles and young adults (ages 16-21) charged with armed robbery or residential burglary. The 1983 study found that, on average, sentences were more severe in the criminal courts, but the difference was partly due to the juvenile court's more differentiated handling of cases. When offenders had a record of prior offenses or had committed prior violent offenses, the juvenile court's response was far more severe. Aggravating factors had less effect on the severity of criminal court dispositions, which were more likely to be based strictly on the charges involved. For example, among Los Angeles armed robbery cases with no aggravating factors, incarceration was imposed on 41% or young adults and 23% of juveniles. Among cases with two aggravating factors, however, incarceration was ordered for 53% of young adults but 63% of juveniles.

The criminal court's ability to impose long sentences is often expected to enhance the severity of dispositions for transferred juveniles. In 1986 Rudman et al. analyzed case outcomes for a sample of 177 juveniles considered for transfer in four urban jurisdictions. In 71 cases, the transfer was denied and the youth was retained by the juvenile court. The study showed that sentences imposed on youth in criminal court were often longer than those ordered by the juvenile court. While 57% of the youth handled in juvenile courts received terms of confinement under two years, this was true of just 12% of the youth transferred to criminal court.

Other studies conducted within single jurisdictions have reached similar conclusions. Researchers in Oregon and Pennsylvania, however, followed the criminal court sentences imposed on youth transferred from juvenile court and found that less than 15% received sentences in excess of three years.

The debate over the efficacy of criminal court transfer has been underway for a least 50 years. Yet, there are still no definitive answers to basic questions such as whether transferred juveniles are more likely to be incarcerated, spend longer periods in confinement if incarcerated, or are less likely to be re-arrested upon release from incarceration. In many ways, policy makers are operating in the dark on this issue.

There have been very few studies of criminal court transfer, and those that are available typically utilize small samples and offer very limited comparisons of juvenile and criminal court outcomes. The most common findings indicate that transferring serious juvenile offenders to the criminal justice system does not appreciably increase the likelihood of incarceration. It may

increase the length of confinement for some very serious offenders, but the majority of transferred juveniles are likely to receive sentences that are comparable in length to the terms of commitment already available in the juvenile justice system. This supports the proposition that criminal justice sanctions should be reserved for the most serious, violent, and chronic juvenile offenders.

The States have experimented with a variety of responses to serious, violent, and chronic juvenile crime. One of the reasons is the perception that the juvenile justice system is unable to effectively sanction and serve this category of offenders. This is due, in part, to confidentiality issues. Another reason for looking to criminal justice system solutions is the notion that juvenile court jurisdiction cannot be extended sufficiently to deal effectively with older juveniles. Finally, the juvenile justice system is believed to lack effective programs for serious, violent, and chronic juvenile offenders.

We are planning to study the confidentially issue. The attached draft report, "Graduated Sanctions for Serious, Violent, and Chronic Juvenile Offenders" (May 1994), resulting from OJJDP's program development work, identifies effective model graduated sanction programs that were selected based on an extensive national program search.[31] We have also been examining statutory mechanisms for transferring and waiving juveniles to criminal court. See the attached bulletin, "How Juveniles Get to Criminal Court" (May 1994).[32] We plan to compare the results of juveniles transferred or waived to criminal court with those processed in juvenile courts.

While we do not have a complete picture of criminal court handling of juveniles at this time, a study by the General Accounting Office, mandated by the 1992 Amendments to the Juvenile Justice and Delinquency Prevention Act, is underway. OJJDP intends to build on the GAO study to track developments and define a research agenda in this area.

In the meantime, States must take a dual approach to serious, violent, and chronic juvenile offenders. While they are developing a system of graduated sanctions and a continuum of program options, they must make the most of existing resources. In some instances, this may require conviction of violent juvenile offenders in the criminal justice system. Creative jurisdictions might prosecute these offenders as adults, but blend criminal and juvenile justice system sanctions at sentencing by providing for initial confinement in juvenile correctional facilities with transfer to adult facilities or supervision if necessary or warranted. Another possibility would be to create a three-tiered system, with options of juvenile sanctions, an adult conviction with imposition of judgment withheld pending successful completion of a treatment program,

and a third tier of incarceration in the criminal justice system for juveniles whose conduct requires longer term incarceration, or who fail to complete a conditional conviction program.

While recent legislative trends indicate that States are increasing their use of waiver and transfer mechanisms as a means to get tough on juveniles they may, perhaps, be losing sight of the rehabilitative goals and desired capabilities of the juvenile justice system. This is a trend that should be of concern because of its potential impact on our ability to rehabilitate many thousands of young people who could become productive members of society.

Mr. Chairman, this is why implementation of the Comprehensive Strategy is so important. We believe that a comprehensive and balanced approach to dealing with serious, violent, and chronic juvenile offenders offers a long-term strategy for preventing and controlling delinquency and serious, violent juvenile crime. We believe that, when fully implemented at the State and local level, this comprehensive strategy will have numerous benefits:

- It will prevent delinquency and result in fewer young people entering the juvenile justice system.
- It will increase the responsiveness of the juvenile justice system in meeting juvenile offenders' needs.
- It will result in greater accountability on the part of youth, thereby decreasing the likelihood that they will become chronic offenders.
- And, ultimately, it will reduce crime as fewer serious, violent, and chronic delinquents become adult criminals.

Implementing this comprehensive strategy for serious, violent and chronic juveniles is a major program priority for the Office of Juvenile Justice and Delinquency Prevention. OJJDP made an award in 1993 to the National Council on Crime and Delinquency for program development work on the Comprehensive Strategy. NCCD is preparing a blueprint to guide communities in assessing their existing juvenile justice system and planning new programs that respond to community-identified needs. NCCD is also identifying demonstrated-effective programs for prevention, treatment and control of serious, violent and chronic juvenile delinquency. The National Center for Juvenile Justice has recently completed, under OJJDP funding, a nationwide assessment of promising and effective juvenile justice system programs under OJJDP's new "what works" series. Over 400 program models were identified, including specific approaches targeting serious, violent, and chronic juvenile offenders, that will be shared with communities implementing our comprehensive strategy .

Funds are available in Fiscal Year 1994 to award competitive grants to two new jurisdictions to carry out the Comprehensive Strategy assessment, planning, and implementation process, in

addition to the two jurisdictions we funded last year. We are also developing an early intervention and prevention program model.

We at the Department of Justice look forward to working in partnership with members of the Subcommittee and State and local officials throughout the Nation to further the goal of providing justice to our Nation's children.

ENDNOTES

1. Federal Bureau of Investigation. Crime in the United States 1992. October 1993. p. 225.

2. Office of Juvenile Justice and Delinquency Prevention. "1992 Juvenile Arrests." OJJDP Fact Sheet. May 1994. p. 1.

3. Ibid. p. 2.

4. Office of Juvenile Justice and Delinquency Prevention. "Are Juveniles Driving the Violent Crime Trends?" OJJDP Fact Sheet. May 1994. p. 1.

5. Ibid. p. 1.

6. Huizinga, David, Rolf Loeber, and Terence Thornberry. "Urban Delinquency and Substance Abuse." Office of Juvenile Justice and Delinquency Prevention. 1993.

7. Office of Juvenile Justice and Delinquency Prevention. "Juvenile Victimization 1987-1992." OJJDP Fact Sheet #17. July 1994, p. 1.

8. Ibid. p. 1.

9. Ibid. p. 2.

10. Bureau of Justice Statistics. "Child Rape Victims." Crime Data Brief. June 1994. p. 1-2.

11. National Committee to Prevent Child Abuse. Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1993 Annual Fifth State Survey. (Working Paper #808). April 1994. p. 12.

12. Smith, C. A. and T. P. Thornberry. "The Relationship Between Childhood Maltreatment and Adolescent Involvement in Delinquency and Drug Use." Paper presented at the meetings of the Society for Research on Child Development. New Orleans. March 1993.

13. U.S. Bureau of Census. Poverty in the United States: 1992, Current Population Reports, Consumer Income (Series P60-185.) 1993. p. 4-5.

14. U.S. Congress. Overview of Entitlement Programs, 1992 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means. 1992. p. 1,289.

15. Office of Juvenile Justice and Delinquency Prevention. "Urban Delinquency and Substance Abuse—Initial Findings." OJJDP Research Summary. March 1994. p. 16.

16. U.S. Congress. Overview of Entitlement Programs, 1992 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means. 1992. p. 1,078-1,080.

17. Ibid. p. 1,078-1,080.

18. Ibid.

19. Ibid. p. 1,078-1,080.

20. National Institute of Justice. "Gun Acquisition and Possession in Selected Juvenile Samples." Research in Brief. Co-sponsored by the Office of Juvenile Justice and Delinquency Prevention. December 1993. p. 6.

21. Office of Juvenile Justice and Delinquency Prevention. "Juveniles and Violence: Juvenile Offending and Victimization." OJJDP Fact Sheet. July 1993. p. 1.

22. Federal Bureau of Investigation. Crime in the United States 1992. October 1993. p. 225.

23. Curry, David G., et al. "National Assessment of Law Enforcement Anti-gang Information Resources." Final report submitted to the National Institute of Justice. 1993.

24. Federal Bureau of Investigation. Crime in the United States 1991. August 1992. p. 283.

25. Office of Juvenile Justice and Delinquency Prevention. "Conditions of Confinement: Juvenile Detention and Corrections Facilities." OJJDP Research Summary. February 1994. p. 1.

26. Office of Juvenile Justice and Delinquency Prevention. "How Juveniles Get to Criminal Court." OJJDP Bulletin. May 1994. p. 1.

27. Ibid.

28. Ibid.

29. Office of Juvenile Justice and Delinquency Prevention. "Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders." OJJDP Program Summary. December 1993. p. 8.

30. Hamparian, Donna, et al. The Violent Few: A Study of Dangerous Juvenile Offenders. Lexington, Massachusetts: Lexington Books. 1978.

31. Krisberg, Barry, et al. "Graduated Sanctions for Serious, Violent and Chronic Juvenile Offenders." Draft document submitted to OJJDP, May 1994.

32. Office of Juvenile Justice and Delinquency Prevention. "How Juveniles Get to Criminal Court." OJJDP Bulletin. May 1994.

85-752 42

Mr. SCHUMER. OK. Thank you, Mr. Wilson.

You have stated that OJJDP has developed a comprehensive strategy for serious, violent and chronic juvenile offenders to prevent delinquency and to ensure that delinquents are held accountable for their actions. First, how do you plan to identify and control the serious violent offender? Is there a way to do that? Is this in your plan?

Mr. WILSON. Well, it is a matter of being——

Mr. SCHUMER. As you pointed out the vast majority of kids don't commit any crimes at all. Then there is a second group that commits sort of low-level crimes; and some certain and reasonable punishment, in my view, as well as some help could help steer these kids away from greater crimes. But then we have a group that is going to go into the greater crimes and drive society nuts. How do you identify these kids? Is there a way to identify that last group, not with exact precision, but with some precision?

Mr. WILSON. It is very difficult. There are many jurisdictions that don't respond to first-time offenders, because the statistics show that about half of the first offenders won't come back a second time.

Our belief is that if you have an immediate response to all of the first-time offenders, a constructive, positive response, that the 50 percent who wouldn't come back, of course, won't; but perhaps half of those kids who would otherwise come back can be held——

Mr. SCHUMER. So what is a constructive response to those kids?

Mr. WILSON. There are a variety of programs in the community—youth leadership and service programs; a number of home detention programs and counseling options. If there is a problem in the family, family counseling or parent skills training can be helpful. The problem is that we don't tend to sit down and comprehensively assess what the juvenile's needs are and then address those early and quickly. That is the key.

Mr. SCHUMER. That was the job of the family court. That is why it was set up and why it was supposed to be different from the criminal court. You are saying in the vast majority family courts don't do that?

Mr. WILSON. I think that is true. I think it is a matter of resources.

Mr. SCHUMER. Why?

Mr. WILSON. Having the resources to put together the kinds of teams that would be needed to comprehensively assess and plan for a juvenile's needs; and even once you do that, oftentimes the resources that would be necessary for a treatment plan simply aren't there.

It is not really constructive to wait and try and identify the kids who already are serious and violent offenders. There are a variety of risk factors for delinquency, risk factors for continuing delinquent conduct, that you can identify and you can assess. It is a matter of probabilities.

Mr. SCHUMER. A kid gets arrested in my city for, say, spraying graffiti on a wall. My guess is that an enormously high percentage don't get any punishment at all, except being told, don't do it again. I am not advocating jail time, but I would like to see kids like this

be required to work on a Saturday, or pay restitution or something like that. How often does that happen throughout America?

Mr. WILSON. Well, not often enough. There are a number of jurisdictions that have provided restitution and community service programs in the past. We continue to provide——

Mr. SCHUMER. How many kids does that affect?

Mr. WILSON. I couldn't give you a number. There are hundreds of restitution programs that are available to juvenile courts throughout the country. But there are thousands and thousands of other kids who could benefit from this kind of a program.

Mr. SCHUMER. It seems to me that a key issue in this is that when a kid who is on probation doesn't show up, he should get bounced up to a higher sanction. That is called graduated sanctions. You just issued a report on this.

How many of these programs have that kind of an agenda?

Otherwise, my view is that any kid from any background—and kids are always tempted to do minor infractions of the law in their adolescence. If they are not treated, if they are not handled in a way that shows society is serious about stepping over the line and breaking the law, they are going to do it again and again until it gets so high that they are committing these terrible crimes. My guess is very few kids who murder somebody, that is their first violation of the law.

Mr. WILSON. Very seldom would it be their first contact with the system. But it is also true that if a probation officer has a caseload of 200——

Mr. SCHUMER. Right.

Mr. WILSON [continuing]. Kids, that that individual juvenile is not going to get anything but maybe an occasional visit or a phone call, and it isn't going to make any difference.

Mr. SCHUMER. Let me just ask a few more questions. A recent Appropriations Committee report noted that the length of time OJJDP is taking to distribute grants under its discretionary grant program is much too long. According to the report, as of June 15, 1994, grants for the fiscal year 1994 haven't been awarded. The Appropriations Committee noted it shouldn't take 10 months to distribute these funds and asked for a report from your office as to what actions were planned to accelerate the grant-making process. Have these grants been awarded yet?

Mr. WILSON. We have about $27.6 million altogether in discretionary grants for this fiscal year. About $10 million of those are earmarked programs; by and large they have been funded. We are still working on funding a variety of what we call "soft earmark programs," where we are negotiating with programs that have been identified for funding consideration by the Congress.

We have about $4 million in project period programs, most of which have been funded already; and another $4.2 million in discretionary continuations. Again, most of those projects have been funded. A lot of that funding depends upon individual project funding cycles. In other words, if they are not up for refunding until September, we won't be funding them until that time.

Mr. SCHUMER. Have you made changes to deal with the length of time that this takes?

Mr. WILSON. The only programs that have been affected by the delay in getting out our program plan is about $9 million in funding for new programs that we have identified. We went through a lengthy internal process, published our proposed program priorities, received some 60 public comments and carefully assessed those comments; and our final program plan is being published in the Federal Register today. Concurrent with that——

Mr. SCHUMER. That is not a coincidence, I gather?

Mr. WILSON. It actually is coincidence, Mr. Chairman, a happy coincidence.

Mr. SCHUMER. Go ahead. I didn't want to interrupt you with——

Mr. WILSON. Applications for that $9 million in new programs will be received by OJJDP before the end of the fiscal year, and we will get those out as soon as possible.

We also have a number of other programs and will be making money available to the States through our final title V prevention guideline which will be published within the next week or so. Those moneys will be available to the States immediately thereafter.

Mr. SCHUMER. OK. Congress established a Coordinating Council on Juvenile Justice and Delinquency Prevention. It was composed of your office, the Attorney General, and a whole panoply of Cabinet officers. It was supposed to meet quarterly. When was the last time it met?

Mr. WILSON. It met in 1992, shortly before we were reauthorized, at which time the Council was restructured from having 23 Federal agency members to having 9 Federal agency members and 9 citizen practitioner members.

Mr. SCHUMER. Why haven't you met since 1992?

Mr. WILSON. Because we haven't had the appointments of the citizen practitioner members needed to have a legally constituted Council.

Mr. SCHUMER. Who makes those appointments?

Mr. WILSON. Three each are made by the President of the Senate, the Speaker of the House and the President of the United States.

Mr. SCHUMER. Have any of them been made?

Mr. WILSON. The Senate appointments were made about a year ago. The House appointments were made 2 weeks ago, and the President announced his intent to nominate three individuals on July 6, and as soon as that processing is completed——

Mr. SCHUMER. This is July 6 of next year?

Mr. WILSON. July 6 of this month. As soon as those appointments are processed, we will hold an orientation session and the first regular meeting of the new Council. We are very anxious to get the Council underway.

Mr. SCHUMER. Let me call on Mr. Schiff, and then I will come back for a few more questions. I have gone over my 5 minutes by quite a bit.

Go ahead, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I am happy to extend you the additional time.

Mr. SCHUMER. OK.

Mr. SCHIFF. There are just the three of us here.

Mr. SCHUMER. OK. Let me just ask you this. I stated before, I believe that the first time a juvenile commits a crime, he or she should be brought into court and be given some kind of reasonable punishment for that crime. Do you and your office agree with that statement?

Mr. WILSON. I believe that there should be a consequence. It may not require that the juvenile come into court. The consequence can be an informal adjustment——

Mr. SCHUMER. Forget court. What do you mean by a consequence? Would a consequence be to just undergo counseling?

Mr. WILSON. It could be, yes.

Mr. SCHUMER. I am talking about typical cases. Let's say a kid who is charged with graffiti. Do you think there are instances where counseling alone is enough?

Mr. WILSON. I think there may be, and I think that if you use restitution and community service, the juvenile may see it as a punishment, but I would see it more as holding him accountable and trying to get him to understand the consequences of his actions, his or her actions, so that they won't be repeated.

You know, if you learn something so that you don't repeat the conduct, then you have accomplished the goal of society, which is to stop the conduct. Punishment is warranted in many circumstances; it depends on the nature of the conduct and whether it is repeated. If you say that you are going to have——

Mr. SCHUMER. I am talking about a first offense now.

Mr. WILSON. Yes. It depends on the circumstances. There may be——

Mr. SCHUMER. Give me an example where, say, work would not be appropriate?

Mr. WILSON. Where what?

Mr. SCHUMER. Where a restitution program would not be appropriate, and only counseling or don't-do-it-again would be appropriate.

Mr. WILSON. Well, there are minor—you are talking about delinquent offenses?

Mr. SCHUMER. Yes.

Mr. WILSON. A fight at school——

Mr. SCHUMER. My example was someone sprayed graffiti on some buildings or some cars.

Mr. WILSON. Well, vandalism is a crime that really makes so little sense that I think it deserves an aggressive response. And again, there are——

Mr. SCHUMER. So you believe in that situation the vast majority of people, kids who commit this type of crime should be required to face some kind of punishment. Why are we afraid to call it punishment. Punishment has positive effects, right?

Mr. WILSON. OK.

Mr. SCHUMER. OK. Or maybe you don't think it does. I think it does.

Mr. WILSON. It can.

Mr. SCHUMER. Kids should have to work, or face something other than just counseling, something that will be seen as punishment. Do you disagree with that or agree with that?

Mr. WILSON. No. I think in a case of graffiti and vandalism that some kind of punitive sanction is very appropriate.

Mr. SCHUMER. OK. Let me ask you this: You mentioned in your opening that for serious violent offenders you still think that the criminal court may not be appropriate, and that the family court may be better. Give us your reasons why.

The first question is, does that relate to the level of punishment or does that relate to the way the punishment is handled and administered?

Mr. WILSON. Studies show that very often kids who go into criminal court for other than violent offenses——

Mr. SCHUMER. Let's talk about violent offenses.

Mr. WILSON. OK. For first-time violent offenders, and I am not talking about coldblooded murders, there are juvenile court programs that are very effective for working with those kinds of cases.

Mr. SCHUMER. It is hard to talk in the abstract.

First-time violent offense, a 15-year-old or a 14-year-old goes into a 7-Eleven, holds a gun to the head of the proprietor, takes all the money and leaves. Let's take that one.

Mr. WILSON. All right.

Mr. SCHUMER. The kid had a history of more minor-level crimes, and has a troubled family background.

Mr. WILSON. If there have not been aggressive sanctions tried for that juvenile, what is going to happen if he goes into the criminal system, is convicted and goes to a prison, is that he won't get treatment, he will be there for what—for an offense like that, a year or two, maybe.

Mr. SCHUMER. Depends on the State.

Mr. WILSON. And then will come right back out into the same environment with all of the same circumstances that led to that first offense.

Mr. SCHUMER. Right.

Mr. WILSON. In the juvenile justice system, the studies show that juvenile will probably spend just as much time being confined, but will receive treatment services that have a good chance of preventing that behavior from being repeated.

Mr. SCHUMER. OK.

Mr. WILSON. And that is the difference.

Mr. SCHUMER. Did you want to say something?

Mr. SCHIFF. Mr. Chairman, can you yield on that point?

Mr. SCHUMER. I yield.

Mr. SCHIFF. I would like to pursue that. I would like to—I have a couple of other things I want to go back on, but let's stay on that point. A juvenile who happens to be 17 years old and is 6-foot-1-inch tall has just committed a forcible rape while carrying a firearm. In your judgment, what should be done with that juvenile?

Mr. WILSON. Well, depending on background and circumstances, that sounds like the type of juvenile that—and again, a lot depends on the State's law. In some States that 17-year-old would have to be released from the juvenile justice system when he turned 18.

Mr. SCHIFF. Well, I asked your opinion. What do you think should be done with a 6-foot-1-inch-tall 17-year-old who has just committed a forcible rape while carrying a firearm? What is your recommendation?

Mr. SCHUMER. Should that person get anything less than an 18- or a 27-year-old who commits the same crime?

Mr. SCHIFF. Should that person go to prison the same length of time as an adult who has committed the same offense in the same circumstance?

Mr. WILSON. It depends, again, it depends on the circumstances, the background. There are going to be many cases in the circumstance you describe where criminal justice transfer of that juvenile would be very appropriate.

Mr. SCHIFF. Tell me what circumstances would indicate that a juvenile who is 17 years old, 6-foot-1-inch, carrying a firearm, committing a forcible rape shouldn't be transferred over to the adult system. Give me an example of what circumstances, in your mind, would indicate that is not the appropriate response.

Mr. WILSON. If the juvenile justice system has the ability to retain that juvenile long enough to address the juvenile's needs, has the types of programs that would be effective, and the juvenile does not have a history of this type of offense, it may be appropriate to keep him in the juvenile justice system.

Mr. SCHIFF. So you think that with someone who is 6-foot-1-inch and uses a firearm in a forcible rape, we should consider that person's needs?

Mr. WILSON. I think if you—well, I would say you have to look at the background, you have to look at the totality of the circumstances to make that judgment. I think juvenile court judges and prosecutors are positioned to make those kinds of judgments. There is a lot of decisionmaking that has to be made in the justice system about what is appropriate.

Again, if you put that youngster into the criminal justice system and nothing happens—again, nobody spends, even rapists don't spend the rest of their lives in prison.

Our goal, our overriding goal needs to be protection of society, but also holding people accountable and providing appropriate punishment. But you are not protecting society if you just take kids and warehouse them for a few years and then put them back out on the street.

Mr. SCHIFF. I suggest you are protecting society as long as you keep them off the street, and if the problem is, we are not keeping them off the street long enough, that can be addressed in other ways.

Mr. WILSON. I agree.

Mr. SCHUMER. Just reclaiming my time, and then I will let Mr. Schiff continue.

Mr. Wilson, let me ask you this question. Do you believe that violent juveniles throughout America get adequate punishment now, by and large?

Mr. WILSON. No.

Mr. SCHUMER. OK. Thank you.

Mr. Schiff.

Mr. SCHIFF. All right. A couple of other things, Mr. Wilson. I am told—I have not seen this, but I am told that your department issued a report that suggested that there was a substantial amount of racism in the juvenile justice system, and that has been discussed in the media lately. Could you elaborate on that, please?

Mr. WILSON. What the studies have found is that minorities are overrepresented in the juvenile justice system in secure detention and confinement. There are a number of factors that account for that. We have found, through the research that, for example, between 1987 and 1991, the percentage of minority youth in secure detention and confinement in this country went from 53 percent to 63 percent.

Now, I wouldn't characterize that as necessarily a result of racism. A lot of that increase is accounted for by drug convictions. We enforce the law where the violations are taking place, and many times that is in the inner cities. What happens, though, when kids are taken into custody very often is decisions are made about whether they should be detained or diverted, whether, if they are taken into court and they are adjudicated delinquent, they should be put in a community-based program or put in secure confinement.

There are many circumstances where those decisions are made not because of the race of the juvenile, but because of other circumstances—stability of the family, home, and other circumstances. What we want to see is a system where if a juvenile is detained because they don't have a stable family home, that we go in and work with the family to provide a stable family home so that the juvenile can be retained in the home rather than be detained or confined. So I don't look at it as racism; I look at it as the system needing to be responsive to the needs of the kids so that their best interests can be served.

Mr. SCHIFF. Thank you for explaining that.

You mentioned a plan from your department, handling juvenile delinquency. You testified about that. Is this a written plan?

Mr. WILSON. Yes. The Strategy to Address Serious, Violent and Chronic Delinquency is a document that has been published by the Office and circulated around the country.

Mr. SCHIFF. When was it published?

Mr. WILSON. It was published in late 1993. Well, the second printing is June 1994.

Mr. SCHIFF. OK. Thank you.

Mr. WILSON. May I point out, one other thing, too, is, when you talk about violent offenses, the number of violent offenders who actually come into juvenile court or into criminal court and get adjudicated or convicted is relatively small. The ones we catch represent the tip of the iceberg, and that is partly because kids who commit violent offenses don't necessarily continue to do that. They will commit violent offenses, and then that kind of behavior will stop, and they grow out of it oftentimes. In fact, many times we may be catching kids at the end of their violent careers, if you will.

Mr. SCHIFF. Maybe because we don't do something at the beginning of it.

Mr. WILSON. Well, that is right. And that is where the value of prevention comes in.

Mr. SCHIFF. Or the lack of punishment when they do something violent.

Mr. WILSON. Well, it is a combination of the two. It seems to me that immediate intervention is a form of prevention. We are trying

to prevent the development of violent offenders and career criminals, your graduates to the criminal justice system.

Mr. SCHIFF. Let me ask you about one other matter.

You refer to firearms and the availability of firearms to juveniles. In the last 12 months, how many juveniles—that is, people under 18—has the Federal Government prosecuted across the Nation for prosecution of—for violation, rather, of Federal firearms laws?

Mr. WILSON. Very few. There are only 125 juveniles in the custody of the Federal Government now for violations of the Federal Juvenile Delinquency Act or the Federal Criminal Code for juveniles, who have been transferred and convicted.

Mr. SCHIFF. Excuse my interruption, but that bears repeating. In the whole United States of America, the number of juveniles in Federal custody for all offenses is 125?

Mr. WILSON. Yes.

Mr. SCHIFF. And that is all offenses put together?

Mr. WILSON. Yes.

Mr. SCHIFF. All right. So the Federal Government is not doing very many prosecutions of juveniles at all for any offense?

Mr. WILSON. The general rule under the Federal Juvenile Delinquency Act is that the Federal Government defers to States, and of course there are no——

Mr. SCHUMER. Will the gentleman yield?

Mr. SCHIFF. I yield to the chairman.

Mr. SCHUMER. If the DEA or the FBI, the DEA in this case, arrests a kid who has tens of pounds of crack or cocaine, they would generally hand them over to the State?

Mr. WILSON. Generally, yes.

Mr. SCHIFF. All right.

Well, let me ask, there is a proposal in the House crime bill, which I drafted, which the chairman accepted, which takes away the requirement of the U.S. attorneys checking with the States before they prosecute a juvenile, at least for violent offenses. Would you agree with that proposal?

Mr. WILSON. I think that there are circumstances where the Federal law provides for the kinds of enhanced penalties that may be necessary and appropriate in certain circumstances, or where the State doesn't take jurisdiction and the Federal Government wants—would want to do that. But as a general proposition, I think States are very capable of handling those kinds of cases. They have the programs, they have the facilities.

When juveniles are convicted in the Federal system, there are no Federal facilities for juvenile offenders. So what the Bureau of Prisons has to do is to go out with the marshals for preadjudicated children and contract for services from State and local facilities to house those kids.

Mr. SCHIFF. Well, my question was, though, I wrote an amendment which said the U.S. attorney can go ahead and prosecute.

Mr. WILSON. Yes.

Mr. SCHIFF. It doesn't say the U.S. attorney has to, but they can without going to the States first. Do you favor that—would you favor that amendment, yes or no?

Mr. WILSON. Yes. I think U.S. attorneys should have the ability to step in in appropriate cases and prosecute juveniles, or to seek their being prosecuted as criminal offenders under Federal law.

Mr. SCHIFF. There is a proposal in the Senate version of the crime bill, I believe drafted by Senator Carol Moseley-Braun, that suggests that the bind-over age for juveniles to be brought into Federal court as adults—once again, it would be optional, not mandatory, I believe—would be 13.

Mr. SCHUMER. Well, it was mandatory.

Mr. WILSON. Mandatory for certain types of offenses involving a firearm.

Mr. SCHIFF. I am sorry, you are right. Ours was mandatory, theirs was optional. Do you favor a bind-over at 13, whether it is mandatory or optional?

Mr. WILSON. I think that individualized justice is important, and I favor optional prosecution—I think prosecutors need to use their judgment in making those kinds of decisions.

Mr. SCHIFF. So do you favor the changing of the laws, at least, so that optionally the U.S. attorneys can bind over a juvenile at age 13?

Mr. WILSON. I think there are a number of provisions——

Mr. SCHIFF. It is really a yes or no, I think.

Mr. WILSON. Well, I am not authorized to take positions on specific proposals. If you want my own opinion, not speaking for the Department, I think it is appropriate for Federal prosecutors to have increased discretion in handling juvenile offenders, yes.

Mr. SCHIFF. Including to age 13?

Mr. WILSON. I think that might even be appropriate, yes.

Mr. SCHIFF. If we do not have Federal facilities to hold juveniles—and you have indicated that there are all of 125 juveniles in Federal custody—let's assume we pass the Youth Handgun Safety Act, which at least in the House version of the crime bill, among other things, makes it a crime for a juvenile to possess a firearm under most circumstances—how are we going to enforce that?

Mr. WILSON. It makes it a delinquent act, and I think you will see that authority used primarily in States that don't prohibit handgun possession by juveniles. There still are a number of States that don't provide that. In most cases, secure confinement is not going to be the remedy, at least, on a first offense; and on a second offense, again, the Bureau of Prisons would be contracting with local facilities to provide secure services for those juveniles who need that.

Mr. SCHIFF. So you think we will be able to enforce it?

Mr. WILSON. Yes.

Mr. SCHIFF. All right.

Mr. Chairman, just before yielding back, I have to say that——

Mr. SCHUMER. It is your time.

Mr. SCHIFF. Well, before yielding back the time so that you can recognize Mr. Scott, I just have to say that I appreciate the back-and-forth discussion, the exchange of views between our subcommittee and Mr. Wilson. But I have to say that I find it very disturbing that an official of the Justice Department could take a scenario of a 17-year-old who is fully grown, who commits violent rape while armed with a handgun, and when asked if prison is the ap-

propriate remedy for that situation, appropriate punishment, says basically maybe yes, maybe no.

I have never advocated, even as a career prosecutor, that every single criminal, juvenile or adult, who commits any kind of an offense should go to prison. I don't believe that in the least. But I think there are certain lines over which society ought to respond, you are going to prison; we are not going to tolerate that, and we are not going to be concerned about what your shortcomings might be. It seems to me that ought to be the policy of the Federal Government.

If we start to waffle around on such an obvious example of where that should take place, I think that we are sending the exact wrong message out to the streets.

I yield back, Mr. Chairman. Thank you.

Mr. SCHUMER. Thank you, Mr. Schiff.

Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. SCHUMER. Mr. Scott, by the way—just for the record, is not a member of the subcommittee. He has been very interested in this issue; and he is a member of the full committee.

Mr. SCOTT. Thank you very much. I think some of the questions suggested that we don't put juveniles in jail, we had 125 federally across the country, is it fair to say that in Washington DC, 5 to 10 percent of teenagers are in jail today?

Mr. WILSON. I couldn't give you an exact figure, but that sounds pretty high.

Mr. SCOTT. For minority teenagers, is it at about 10 percent?

Mr. WILSON. That are in jail in the District of Columbia?

Mr. SCOTT. Right.

Mr. WILSON. No. I don't think that that is accurate, but I don't have those figures.

Mr. SCOTT. About 40 percent under the criminal justice system—that is, probation, parole, in jail, outstanding warrant.

Mr. WILSON. OK.

Mr. SCOTT. Do the Federal courts have services for the—well, one of the complications we have gotten into in doing these cases is that you have to try the innocent and relatively less guilty along with the very guilty of heinous crimes. You have to use the same procedure. When you bring a child into Federal court, does a Federal judge have services available to him as they do in State court, in a State juvenile court?

Mr. WILSON. For providing services other than security, detention and confinement, it differs from State to State, but there are a variety of private nonprofit agencies that provide services that are available. Again, services that are available through local units of government may be available via contract for juveniles in the Federal system.

Mr. SCOTT. But I mean, is a judge trained in juvenile justice and what to do, what is appropriate for one child or another?

Mr. WILSON. Yes.

Mr. SCOTT. And what is the extent of that training? How many times are they trying juveniles?

Mr. WILSON. We provide as part of our technical assistance and training program, funding to the national council and juvenile and

family court judges who provide an extensive training program for juvenile court judges. I am sure Judge Mitchell can give you additional information about that when he testifies.

Mr. SCOTT. I am talking about in the Federal system.

Mr. WILSON. In the Federal system? I am not aware of any specialized training for Federal judges. They sit so seldom as juvenile judges.

Mr. SCOTT. Well, if people are brought into the Federal system, what judges would hear the cases?

Mr. WILSON. Federal district court judges.

Mr. SCOTT. And you are suggesting that the Federal district court judges have very limited expertise in dealing with juveniles?

Mr. WILSON. To the best of my knowledge, yes.

Mr. SCOTT. And, therefore, those cases are much better handled by judges that have experience with juveniles and a knowledge of the services available?

Mr. WILSON. Yes.

Mr. SCOTT. One of the challenges we have as legislators is how we can do the most in reduction of crime with the limited resources we have. You listed on page 6 of your statement seven things that could be done: Family preservation programs, preventive medical care, Educare, conflict resolution and whatnot. Did you cost out how much of those—if you could implement all of your wish list, how much it would cost?

Mr. WILSON. These, Mr. Scott, are examples of the types of early intervention services that the Attorney General has talked about. A lot of these programs are programs that would be the responsibility of other agencies, like the Department of Education or the Department of Health and Human Services. When you are talking about job training programs, you are talking about the Department of Labor. And this is where the importance of the Coordinating Council comes in. In order to make sure that we are addressing——

Mr. SCHUMER. You mean the one that hasn't met since 1992?

Mr. WILSON. That is the one, yes sir, Mr. Chairman.

Mr. SCHUMER. Right.

Mr. WILSON. There have been a number of coordination mechanisms——

Mr. SCOTT. Let me ask it a little different. Some of us think that there is a lot that could be done to prevent crime a lot more cost-effectively than we are doing now by warehousing people and then letting them out to commit crimes again. We are—we have shown willingness to spend almost infinite amounts of money to lock people up. The House version of the crime bill, there is $13 billion. The Senate version of the bill, if you implement the truth-in-sentencing provisions on the State level that are required, $60 billion. Now, if we could implement all of the things on your list to implement a prevention strategy, how much money are we talking about?

Mr. WILSON. I am not sure that I would want to put a limit on it, Mr. Scott. We——

Mr. SCHUMER. Infinity, he is saying.

Mr. WILSON. Yes. OJJDP is authorized under title V to provide funds through the States for local governments for formulating and implementing comprehensive delinquency prevention plans. Our

first funding for that program is in the current fiscal year and, for the entire United States, totals $13 million.

Mr. SCOTT. Well, Mr. Schiff is going to suggest if we lock people up, that will reduce the incidence of crime in the future—if we lock more people up. I mean, I would just point out that in the city of Norfolk, VA, if we locked up people as bad as they do in South Africa, which is No. 2 in the world, we would be spending about $15 million a year. We are spending $75 million a year locking people up.

If we are going to spend some more money over and above that, some would suggest that we use it for more incarceration. I would suggest that that additional money be put in prevention.

Now, what we need is some idea of what we can get for that investment as opposed to what we would get for that investment in incarceration. And that is where we need some price tags on these things, so that we know——

Mr. SCHUMER. Mr. Wilson, what Mr. Scott is asking is if the list of services that you listed here were available to every juvenile throughout the country who committed juvenile crimes, how much that would cost. We will give you a week to come up with an estimate and submit it for the record. It is a hard question for you to answer right now.

Mr. SCOTT. If he doesn't have the numbers, obviously he can't make it up.

I would point out that it is not just for those who have committed crimes, but for those who are identifiably at risk, because we want to catch them before. I have preventive medical care for pregnant women. Obviously, we can't wait for babies to commit crimes.

Mr. SCHUMER. OK. Do it for everybody on your list.

Mr. WILSON. OK.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Scott.

Thank you, Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman.

Mr. SCHUMER. Let me call our second panel forward.

Our second panel consists of people who have worked with juveniles within the justice system. Both panels II and III have a wide variety of views. We have tried to get different ends of the spectrum.

First, we are going to hear from Peter Reinharz. He is the chief family court prosecutor in New York City.

Second, we are going to hear from Jo-Ann Wallace; she is the director of the Public Defenders Service in Washington, DC, and the former head of Public Defender Service's juvenile services program.

And third we are going to hear from Patrick Murphy. He is the Cook County public guardian, charged with representing to Cook County the interests of abused and neglected children. Mr. Murphy also has experience defending juveniles.

And finally we are going to hear from Judge David Mitchell. He is an associate judge in Baltimore, MD; and since 1984, he has been the chief administrative judge in the division for juvenile causes.

Because this is a large panel of different views and we want to have ample time for questions, what I am going to ask is that each

of you stick pretty religiously to the 5-minute rule. That means when you see the light shift from green to red your time is up, and shortly thereafter, I will generally tap the gavel to further remind you of that.

But your entire statements will be read into the record. So, without objection, those statements will be read into the record.

First we will hear from Mr. Reinharz.

STATEMENT OF PETER REINHARZ, CHIEF, FAMILY COURT DIVISION, NEW YORK CITY LAW DEPARTMENT

Mr. REINHARZ. Good morning, Mr. Chairman. It is good to see you again, members of the committee. I thank the Congress, and I thank the Subcommittee on Crime and Criminal Justice of the Judiciary Committee for inviting me here today and for giving me the opportunity to be heard. I have submitted written testimony and a summary, and I will just briefly, if I can, just summarize my remarks.

I certainly appreciated the opening statements of the chairman dealing with the 64-year-old grandmother. I know that case well. I prosecuted that case. It was not just a 64-year-old grandmother; her name was Anna Ruiz. By all accounts, she was a lovely woman, a community leader, somebody that raised money for the church, somebody that raised money for the street fairs, somebody that was known throughout the community.

She isn't just a statistic, she is a real casualty of the juvenile justice system; and I can tell you what that casualty is all about, because not only did I have to deal with the case, not only did I see the offender, but I also spoke with the daughters of Anna Ruiz. I also spoke with her extended family, and that is what the true tragedy of that case is all about.

I point out to the people here that we have been calling the actions that resulted in the death of Anna Ruiz juvenile delinquency. I want to make clear that we are not dealing with juvenile delinquency anymore. Juvenile delinquency is kids on street corners, probably breaking windows, maybe spray painting cars. We are no longer, at least in the city of New York from the prosecutors' perspective, dealing with delinquency. This is crime. Anna Ruiz was a victim of a crime, and it is time that we started thinking of this as criminal behavior.

The problem in the juvenile justice system—well, the problems are many. But we can start just by looking at this case and seeing that in fact one of the things that we do not focus on in the juvenile justice system are the victims. We ask questions about what to do with offenders. Are we talking about rehabilitation?

We must remind ourselves that the juvenile justice system is part of the criminal justice system. I am a prosecutor in that system, and I will tell you that the first obligation of the Government is the protection of its citizens. No matter what we do in the juvenile justice system, no matter what scheme we develop, we must not forget that obligation. Unfortunately, we are not living up to that obligation as it stands right now.

For instance, in 1986, my office, the juvenile prosecutors' office in New York, had a mostly misdemeanor practice; it was predominantly misdemeanors. The No. 1 crime was jostling, which is

pickpocketing. We now receive 90 percent referrals of felony cases. The No. 1 crime that we see is robbery by groups of kids. In fact, in New York City, according to the 1991 UCR's published by the FBI, one-quarter of all of the robberies committed by 15-year-olds and under across the Nation were prosecuted in New York's family court. That is the juvenile court. That excludes the other thousand or so robberies that we have in the adult system, prosecuted as juvenile offenders. The fastest rising offense is felony assault over the last 3 years; and naturally, the second fastest rising offense has been and actually was for a time the fastest rising offense, illegal possession of firearms. It went up over 700 percent in a 7-year period.

The person that killed Anna Ruiz, a young man by the name of Jay Perez, had a familiarity with firearms. In fact, on the Saturday night that he shot her, he went upstairs with his handgun and turned on the television set because he wanted to watch the HBO special on gun violence, "Strapped." He turned it on, put it on, watched about 4 or 5 minutes, walked over to the window, pointed the gun out the window and with two shots killed Anna Ruiz. The night before he carried the gun around Greenwich Village walking around with it. What he did with it, we don't know.

You see, one of the problems, at least in New York and I know in other jurisdictions, is that when people are arrested for crimes like gun possession, the juvenile justice system does not let us fingerprint or photograph these people. I get literally thousands of cases every year for violent felonies that cannot be photographed. Among them are illegal gun possession. So I cannot find out what certain juveniles are doing with guns. I cannot take their photographs, I cannot put them in photo arrays so that I can solve some of the open complaints regarding armed robberies.

Jay Perez certainly is not the only person who walked around with a handgun. New York City every day sees hundreds of kids coming in and out of the city as mules. Recently we arrested a little kid by the name of Little Rock. He was 14 years old, yet $1,100 a week was really a slow week for him in the gun trade. He would run between New York and West Virginia, buy guns and bring them back up to New York City.

Mr. SCHUMER. Mr. Reinharz, I am going to have to ask you to sum up a little bit.

Mr. REINHARZ. OK. If the juvenile justice system needs something, it needs balance. Certainly in the city of New York and myself, we are not saying that punishment is the only way of dealing with this crime. But I will say that we do have to look at a way of dealing with juvenile offenders. We have to make sure that the public is protected and at the same time we also have to make sure that a balanced approach is given so that people aren't committing these crimes again.

Prevention and incarceration are not mutually exclusive things, they are not mutually exclusive principles; and the juvenile justice system and the legislatures have to recognize that fact.

Thank you.

Mr. SCHUMER. Thank you, Mr. Reinharz. I am sorry to cut people short, but such are our time constraints. So I would ask everyone

to get to the heart of the matter right at the start instead of building up to it.

[The prepared statement of Mr. Reinharz follows:]

Testimony of Peter Reinharz
Chief, Family Court Division
New York City Law Department

Sub-Committee on Crime
Judiciary Committee
U.S. House of Representatives
July 14, 1994

Good morning. I thank the Sub-Committee on crime for their invitation to speak about the growing problem of juvenile crime. Although my work is limited to the prosecution of cases in New York City, my conversations with other prosecutors across the country assures me that juvenile violent crime is a national problem. I hope that through my testimony, and from the testimony of others today, the Congress will recognize the vast scope of this epidemic, and will take the necessary steps to address the escalating violence.

Last summer Anna Ruiz became a statistic. I doubt that the members of this committee or even most New Yorkers have ever heard of Anna Ruiz. Her passing only affected the lives of those immediately around her. She will be missed by her two daughters, her grandchildren, and her many friends in the Wagner Houses of East Harlem that knew and loved Anna Ruiz. On the evening of August 26, 1993 Anna Ruiz joined the long list of casualties that have defined the new wave of juvenile violence across America.

Jay Perez told the interviewing probation officer that he never really knew Anna Ruiz. He had seen her around the neighborhood talking with friends, and playing with the children. He knew that she was some kind of community leader who had helped set up street fairs and who had raised money for the church. Jay Perez knew that Anna Ruiz was everything to a community that he would never be - important, loved and respected. The only effect he felt

from the death of Anna Ruiz was going to jail.

Anna Ruiz and a friend were walking out of the building at 50 Paladino Avenue in Manhattan after attending a prayer vigil for the late husband of a friend. They crossed the path next to the playground where 75 - 100 kids were playing outside on a warm summer night. Down the path about 50 yards, a DJ had set up shop for a party. The music was loud, and hundreds of people were having a great time on a Saturday night.

Jay Perez had just gotten upstairs to his fifth floor apartment to put "Strapped" on the television. This was an HBO docu-drama about the dangers of guns in urban America, and Jay wanted to see the kinds of firepower that graphic television could provide. Jay wanted to check out all the guns - and to test his own knowledge of the different makes and models used on the street.

Jay pulled out the .25 calibre semi-automatic that he was carrying in his pocket. He later told police that he had carried it around for several days, including on a trip to downtown to walk around Greenwich Village. He denied using the gun in robberies downtown, although he did admit to firing the weapon off rooftops at night. At this time, Jay wanted to fire the gun out the window. It didn't matter that the playground across the yard was filled with little children, and although he could hear the music from the nearby outdoor party, the safety of the people was not in the mind of Jay Perez.

Jay opened the window to his room as he prepared to discharge the gun. He pointed the weapon out the window as "Strapped" was just under way. He fired two shots through the trees out towards the playground. As Perez shut the window to watch the HBO special on gun violence, Anna Ruiz fell dead to the sidewalk with a bullet in her heart.

This is the face of juvenile crime for the 1990's. In New York the legislature has chosen to classify these offenses as "Juvenile Delinquency", but those of us in the system know that acts like these are nothing short of violent crime. Victims interviewed by prosecutors in my office do not consider themselves victims of delinquent or non-criminal acts. They are consistently angered when they hear that many of the offenses for which the youths stand charged face penalties that date back to 1962 when the New York Family Court was first created. In any event, even the most recent sanctions are nearly twenty years old. It is time for the Family Court to catch up with what the public already knows: The juvenile justice system as it exists today cannot provide the most basic obligation of government - *the protection of the citizens.*

There are few subjects over the last year that has occupied the American public more than the proliferation of violent juvenile crime. Television media has focused on kids and guns with regularity, and the nightly news broadcasts have become nothing more than listings of violent event following violent event. Whether it is an elementary school principal cut down in the cross-fire of drug dealers, a cyclist fatally shot in Prospect Park for his bicycle, or the gang rape of a woman at gunpoint along the Coney Island boardwalk, the profile of today's violent offender is frightening. They are young, they are armed and they enjoy their brutality.

In 1986 the New York City Law Department prosecuted a primarily misdemeanor caseload. The most prevalent crime charged throughout the five boroughs was jostling - misdemeanor pocket picking. Those cases that were felonies were likely to be car thefts, burglary or drug possession. Loaded gun possession was limited to about 100 cases throughout the city, and most of these weapons were small calibre Saturday nights special - known for their lack of power and reliability.

In less than a decade juvenile crime in New York has a completely different look. Ninety percent of the cases referred for prosecution to the New York City Law Department are for felony offenses. No adult prosecutor in New York has a 90% felony practice. Similarly, the most often charged crime throughout the five boroughs is group robbery. This crime, if committed by an adult allows for a maximum penalty of 5 to 15 years of incarceration. As a juvenile the maximum initial placement for the same act is 18 months in a limited secure facility.

Robbery is clearly the choice for violent crime in the City of New York. Robbery (all types) is the largest classification of offense in the City of New York's juvenile justice system. Whether the robbery is done with a weapon, by threat of a group, with physical injury or via "strongarm" tactics, robbery has outpaced even the total numbers of narcotics cases for the last three years running. Last year nearly 4,000 robbery cases wee handled by the Family Court prosecutors, and this year the numbers are likely to continue to increase. Based upon the FBI's 1991 Uniform Crime reports, nearly ¼ of all the robberies committed in the United States by youths 15 years of age and younger were processed through New York City's Family Courts. This number excludes the approximately 1,000 juvenile robbery cases that were handled in New York City's adult courts[1].

Guns in the hands of teens have changed both in number and in kind. Loaded gun possession - just the cases concerning possession and not those cases concerning armed offenses - has increased over 700%. Young offenders are carrying large calibre weapons like the 9 mm "Glock", the Tech-9 and even the Uzi. These powerful semi-automatic and automatic weapons

---

[1]. Under New York law, juveniles age 14 to 15 who commit certain violent felonies like armed robbery and forcible rape are processed by the adult criminal system. See Penal Law §30.

have become symbols of strength for the 1990's YUPPIE - young urban predator. The gun has become the everyday tool of the drug dealers, and its firepower is all too often used to end the life of New York store owners, cab drivers and delivery men. These weapons of war are carried in the subways, on the streets and in our schools. Many young people are afraid to go the bathroom in their school for fear that someone there might be "strapped".

Over the last three years, the offense in New York City which has risen fastest in number in the juvenile justice system is felony assault. These cases include shootings which result in physical injury, beatings that cause serious physical injury, and attacks with bats, sticks and other weapons that injure the victim. Groups of teens travel the subways and streets in search of victims. Their goal is not to support a drug habit - nor is it to help feed a family. These offenders are indulging in a new style of recreation for the mid-90's. Their purpose is predatory, and their results are painful. Unless we reverse this disturbing trend among some of our young people, our great urban centers are sure to suffer.

Yet the growth of juvenile crime, and the increase in victimization has caused little to change in the state of New York. Laws that were enacted at another time for another type of offender are still being applied to hardcore felons despite years of escalating violence. Concerns about the stigmatization of children charged with petty offenses should not impede the prosecution of violent criminals. I am not suggesting that it is necessary to fingerprint and photograph low level offenders, but youths in possession of loaded handguns in New York are not presently fingerprinted and photographed thus eliminating all possibilities of linking these offenders to armed robberies, shooting and assaults via photo arrays and other investigations.

Further, the juvenile court prosecutors are without power to seek arrest and search

warrants despite constitutional requirements that assure suppression upon failure to obtain a warrant. In the above example, Jay Perez gave the gun to another youth after the killing of Anna Ruiz. I made application to the criminal court for a warrant to search the house of the other youth even though the Family Court Act would not allow such a measure. Since Jay Perez had no standing to challenge that warrant, there was no issue regarding suppression of the gun. Yet had Jay Perez kept the gun in his apartment, the police and the prosecution would have been powerless to secure the weapon that killed Anna Ruiz.

Many of these rules that prohibit fingerprinting young violent offenders, or restricting the use of warrants are based in a system that promotes confidentiality over effective law enforcement and common sense. The lack of an ability to fingerprint felons thwarts the ability of law enforcement to identify not only those who possess illegal guns, but also those who commit offenses like robbery, burglary and certain sex offenses. Even felony assaults with guns that result in physical injury to the victim are not eligible for fingerprinting in New York. Thus the prosecution in juvenile cases can never be sure if the identity proffered by an offender is real, or whether the name, address and other pedigree information are totally fictitious.

Most distressing to crime victims (and to prosecutors), however, is the lack of appropriate sanctions in the Family Court. The majority of offenders before the Family Court in New York face the same maximum penalties that were passed by the legislature over 30 years ago. Those sanctions, designed to deal with true "juvenile delinquents" - those who spray graffiti, break glass and slash tires - bear no relationship to the needed sanctions that would help provide protection for the public. Absent a few exceptions, violent felons before New York's Family Court face a maximum sanction of eighteen months in a limited secure facility with a

minimum period of placement of six months. The average length of stay for offenders on an eighteen month placement is 10 - 11 months, so that the youth who possess the illegal gun - or who shoots that gun - is likely to be returned to the streets and schools of the city within one year. Even those youths who fit the narrow category for enhanced sanctions have little to fear from the Family Court. For the killing of Anna Ruiz, Jay Perez received the harshest possible penalty that the Family Court could mete out: three years restrictive placement. Under New York's juvenile sentencing scheme, Anna Ruiz's killer will be eligible for release within two years of the date that he is placed. Anna's daughter, who still resides in the apartment that she shared with her mother in the Wagner houses, will likely see her mother's killer walking about their housing complex within the next fifteen months. Unlike the adult system, there is no parole board and there is no way for the victims or their families to raise objections. Release of violent offenders is solely within the discretion of New York State's Division For Youth.

The juvenile justice system in New York - as in other states - needs a complete overhaul. Bits and pieces of legislative reform - although possibly helpful in the short run - will not provide a workable solution to the crisis. Those that seek to spend every last dollar on incarceration need to realize that prevention programs are an important piece of the criminal justice process. Any experienced prosecutor will agree that the best way to deal with crime is to prevent it from happening.

On the other hand the outdated philosophies of the juvenile justice system have to be placed by the wayside in favor of a process that first and foremost promotes public safety. Any suggestion that seeks to continue the present unworkable philosophies or programs of the last twenty-five years must be regarded as a threat to the infrastructure of the American society. I

am recommending to you that we begin the development of a new juvenile justice system - one that rethinks the most basic presumptions about youth violence - and that we change the rules to ensure that public safety will no longer be compromised. I am testifying here today in the hope that this body will do what the states and the courts have failed to do: recognize that violent adolescents are a threat to the future of all of us. We cannot allow the greatest nation in the world to provide the backdrop for the real life "Clockwork Orange". The Congress must communicate to states that have refused to listen for nearly a decade that a 14 year old with a gun is the most dangerous person on the block, in the school or in the country. The youth that instinctively cannot understand the concept of mortality should not possess without serious sanction the instrument that defines mortality more often than anything else. This Congress must be willing to help provide protection from the predators that roam our streets, kill our friends and families, and bring about the decline of a nation that was once a land of opportunity.

Over the past decade I have watched the role of the Family Court prosecutor go from one of obscurity to one of major public importance. The only reason for this change has been the increase in the violence and in the amount of crime committed by younger and younger offenders. The systems and solutions that were offered or in place ten years ago had little effect on the growth of the violence. Yet these are the same systems that remain in place today. And there is little reason to suspect that those processes -which could not control a misdemeanor population of offenders - could ever work with the hardcore felons before the courts today.

We must begin to reform the information sharing systems in place in the juvenile justice system. Present rules that prohibit the fingerprinting of violent felons must give way to law enforcement's right to track these offenders. While the need for confidentiality of records

should not be rejected, there must be a way to share information among law enforcement agencies that would allow prosecutors and courts to make informed decisions. Fingerprints and photographs of offenders should be shared among police, prosecutors and correctional agencies. Indiscriminate public inspection of these records should not be permitted, but there should be no prohibition for record sharing among those agencies in the criminal justice system. This new system of information sharing should cross county and state boundaries so that a repeat offender in New Jersey cannot enjoy the status of a first offender when he crosses the Hudson River to commit crime in New York.

The juvenile justice system must introduce sanctions that are consistent with the levels of the offenses. In New York State, most violent juvenile face maximum incarceration periods for the bulk of violent felonies for a period of up to 18 months. These terms, called *placemenus*, are within the total control of the placement agency and usually result in 10 - 11 month terms. Courts in New York have no say regarding the release of these young offenders. Thus, the 86% recidivism rate from New York's juvenile justice placement agency[2] is a good indication that the court needs more input into setting the limits for incarceration. Longer periods of incarceration are evident when New York's only juvenile justice placement agency can claim success in 14% of its cases. Further, when many of the offenses committed by youths released form placement are in the violent felony category, it is evident that the offenders being placed by the New York State courts represent a serious threat to public safety. Yet to this date, the system within New York has not changed to reflect or address this violence.

---

[2]. Audit of New York State's Division For Youth by New York State Comptroller's Office, 1993

Anna Ruiz's killer was no stranger to the criminal justice system. Jay Perez had a familiarity with guns that one might have anticipated of an expert marksman. He admitted to firing other weapons on different occasions, although he had never been arrested for those crimes. Jay Perez was, however, on probation for possessing narcotics with the intent to distribute same. Yet his infrequent visits to a probation officer were hardly enough to deter him from carrying a gun around the city - nor did it prevent him from firing the bullet that killed Anna Ruiz.

The need to increase the sanctions also addresses a fundamental problem that exists in the juvenile justice system - the lack of individual accountability for one's criminal acts. It is not uncommon for the media to report about the background and disadvantages of many of the youths who appear in the courts. While these facts may be true, too often they are presented as a means to mitigate the culpability of the offender. The criminal justice system must make clear that *there is no justification for violent behavior.* There may be many *explanations* for the actions of a young offender, but they will never *excuse* the violent conduct. I propose that the juvenile justice system - along with the criminal justice system - adopt a presumption that: *If you are violent, we will presume that you can no longer live in our community.*[3]

While incarceration is a necessity for a safer juvenile justice process, this does not suggest that we abandon all hope relating to these young offenders. The prospects for rehabilitation or socialization of the offenders should not be rejected entirely in favor of jail cells and prison walls. Youths should continue to receive custodial care that provides necessary

---

[3]. This does not suggest that all offenders would necessarily go to prison. A presumption could shift the burden at sentencing of violent felony offenders to the defendant to show by a preponderance of the evidence that he or she could continue to remain in the community.

educational and vocational aspects. Youths with substance abuse problems need to have help close at hand. Those youths that want to reform themselves should not be blocked by society's thirst for retribution - we still must offer a sound program for those individuals who demonstrate that they really want to change their lives.

Thus it now becomes imperative to rethink the argument that defines prevention and punishment as two mutually exclusive principles. Young offenders and their parents have to learn early on in the process that the juvenile courts will not sanction another "bite of the apple". Appearances in court must not be treated as an inconvenience for the offender simply because he has first offender status. Every criminal act of an offender must translate into a definite consequence. Every crime - no matter misdemeanor or felony - must be met with an appropriate sanction that the offender will find tough, quick and sure. Accountability for one's acts will only become possible if the criminal justice system is willing to devote the effort by holding everyone accountable. Should the behavior escalate, so must the punishment. If that behavior becomes violent, then so too must the system react with swift and sure discipline - including a presumption of incarceration. The courts can provide a deterrent - but only when sanctions exist that are likely to deter.

The growth of violence among America's young has been ignored for nearly a decade. As the schools within our cities continue to crumble under the weight of the gun and the knife, we must ask ourselves to commit to a process that places problems before politics. As citizens across the country continue to cross streets to avoid groups of teens, or to avoid areas frequented by teens for fear of violence, we have to ask ourselves *when did we start to fear our own children*? As innocent bystanders get cut down in the cross fire of teens with high powered hand

guns we have to wonder *why do we only wage war on narcotic drugs, and not the instrumentality that kills faster and more surely - the handgun?*

I come to the Congress as a local prosecutor asking the nation's leaders for a commitment to put a stop to this violence. For years the states have studied the problems and have had panel after panel make recommendations that all call for change in the juvenile justice codes. Just last month a statewide commission in New York recommended virtually all of the changes I have outlined above - and have advocated for years. It is time to stop studying the violence, and for the sake of Anna Ruiz and her family - and for the sake of all the Anna Ruiz's to come - to put an end to it. If we do not make common sense changes in the system, the violence will continue, and the numbers of grieving families will grow year after year. These changes will be hard and they will be costly - *but what is the price for the safety of the American people?*

Thank you for inviting me to appear before the sub-committee on crime today, and I will be happy to answer your questions.

Mr. SCHUMER. Ms. Wallace.

STATEMENT OF JO-ANN WALLACE, DIRECTOR, PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

Ms. WALLACE. Mr. Chairman, members of the committee, thank you very much for the opportunity to talk to you today about the treatment of youth in the justice system. Much of the time when people talk about prevention, they focus on children who have not been formerly charged with delinquency. The most important lesson of my years of experience working with children in the justice system is that prevention does not stop at the courthouse door. There is no fundamental difference between the at-risk child who needs help and the same child a few years later who never got the help and is now in trouble.

Empirical evidence tells us that a juvenile justice system built on harsh penalties does not work. It does not deter crime. The District of Columbia has the highest per capita rate of children in custody in the country, yet there is a serious juvenile crime problem. In the District of Columbia, children over 16 who commit violent crimes are prosecuted as adults and face life imprisonment, but there is no evidence that 16-year-olds facing life sentences in adult facilities are committing fewer violent crimes than 15-year-olds facing prosecution as juveniles. In fact, the evidence is to the contrary.

Studies show that recidivism rates are lower for adolescents who are punished in juvenile court than those who find themselves in the adult system. For me, the research merely ratifies what my experience has shown me.

I would like to share with you the story of a young man who I will call Antoine. Antoine was the first juvenile arrested and charged in the District of Columbia Superior Court in 1993. He was charged with 15 weapons offenses. According to the Washington Post, those weapons included an AD–47 assault rifle, a MAC–11 assault pistol and another assault weapon and ammunition. At the time of his arrest, he was on escape status, having run away from Cedar Knoll where he had been placed based upon an assault with a dangerous weapon charge.

Mr. SCHUMER. That is a juvenile detention facility?

Ms. WALLACE. Yes. That has since been closed. In addition to the assault charge, Antoine had two previous adjudications. In June 1993, he was committed to the custody of the Department of Human Services with a recommendation for placement at a residential treatment center. He was 17 years old. Based upon the number and nature of his offenses, Antoine was the kind of young man toward whom—toward whom get-tough enforcement strategies would be aimed.

Many would have argued that Antoine should not be treated as a juvenile. Antoine was the kind of young person who was often written off when we talk about prevention, but Antoine was lucky. He was in a jurisdiction where he remained in the juvenile system and he received treatment. In February 1994, Antoine was released from custody. He entered a GED program run by the University of the District of Columbia, he moved into an apartment under a recently instituted independent living program, and he is now—now he has completed his GED, he is enrolled in a trade school, and he

is earning a decent living. The point is that instead of Lorton, the penitentiary, Antoine is headed toward a productive, law-abiding life as a citizen and as a taxpayer.

Many would say to me in response to that story, well, that is only one child. Well, I have very limited time. If I had more time, I could tell you lots of Antoine stories. I could tell you stories about the Antoines who went on to college, who are raising families, who are in the military; I could tell you stories about the Antoines who have devoted their lives to trying to keep other young people out of trouble. And I can tell you that every lawyer I know who represents juveniles has many Antoine stories they could tell.

These stories confirm that we cannot give up on our young people, that each of those involved in serious weapons offenses and gang activity can be reached and changed. The children in the court system are part of our future, and that future will continue to be crime-filled unless we provide treatment, not only so children will not enter the system, but so that once they are in it and get out, they won't come back. Antoine is now among the statistics that prove that treatment works.

Unfortunately, I have also seen far too much confirmation of the statistics which show that secure facilities that warehouse children do not prevent crime. I personally have watched naive youngsters grow into hard and streetwise adolescents behind a razor wire fence that separates them from society. I have seen firsthand that institutions do not prevent crime; instead, they reinforce self-images as outlaws. Just as bad, the children locked up in such institutions learn not to trust adults. They learn that the system created and run by adults that preaches accountability is not itself accountable.

In sum, one child asked me, how can they tell us that we have to go to school and get a job and then lock us up where there is no school and no vocational training? There is no answer to that question. We must fulfill the promise of treatment; we should not abolish juvenile courts, we must fulfill the promise of treatment that we made when we created them.

Thank you very much.

Mr. SCHUMER. Thank you, Ms. Wallace. I want to thank both witnesses for cooperating with the Chair in terms of the time.

[The prepared statement of Ms. Wallace follows:]

TESTIMONY OF JO-ANN WALLACE
DIRECTOR
PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

before the

SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
HOUSE COMMITTEE ON THE JUDICIARY

The Honorable Charles E. Schumer, Chairman

July 14, 1994

Prepared with the assistance of:
David Reiser
Special Litigation Counsel
Public Defender Service
451 Indiana Avenue, N.W.
Washington, D.C. 20001
(202) 628-1200

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to appear before you today to testify about ways that our juvenile justice system could be made more effective at helping our young people and protecting our community. The most important lesson of my years of experience working with children in the juvenile justice system is that prevention does not stop, cannot stop, the first time a child gets into trouble. Our efforts to help children and their families must continue, because the best strategies for turning children already in the delinquency system away from a life of crime are very similar to the most effective strategies for working with children and their families before the kids ever get into trouble.

I became involved in juvenile justice before I went to law school. I worked in the Massachusetts abuse and neglect and CHINS ("Children in Need of Services") systems as an advocate for children while employed at the Children's Law Project of Greater Boston Legal Services. As a worker at a Youth Services Bureau in Connecticut I counselled at-risk youth who were identified by the police, the schools or other agencies and was involved in planning a statewide conference of youth service professionals discussing the implementation of the then new "Families with Services Needs legislation." I have worked with very young children in inner city daycare centers, including a Headstart program, and have tutored and counselled teenagers in an Upward Bound Program. As a lawyer at the Public Defender Service (PDS),[1] I have represented children in delinquency proceedings in the District of Columbia Superior Court, and on appeal in the District of Columbia Court of Appeals. For almost 3 years, I also headed the PDS' Juvenile Services Program

[1] PDS was established by Congress in the 1970 Court Reform and Criminal Procedure Act, D.C. Code §§ 1-2701-2706, to provide legal assistance to indigent persons accused of criminal offenses and acts of delinquency in the local and federal courts of the District of Columbia.

(JSP). JSP provides advocacy for children confined in the District's juvenile facilities. Day after day, I saw first hand what happened to children who were warehoused in these institutions. I also helped to develop programs so that some of these young people were able to return to the community, go to college, and get started on a new life. In short, my experience with children and the juvenile justice system has given me a solid foundation for an assessment of what works and what does not work to prevent juvenile crime.

As a parent, I know that one of the most important things about caring for a child is that the caring has to continue even when the child does something wrong. Children respond much more readily to discipline from people they care about, and who they know care about them.[2] By law, a child who is placed under the jurisdiction of the Court is supposed to receive "care, custody and discipline," as near as possible to what the child's "parents should have provided." D.C. Super.

---

[2] Unfortunately, many "at risk" children have grown up in households where parental discipline is not always accompanied by loving concern. Many delinquent children grow up in "coercive families" where children receive attention, in the form of punishment, only by doing something wrong. This can lead to an accelerating cycle of misbehavior and punishment. Jerome S. Stumphauzer, Helping Delinquents Change" A Treatment Manual of Social Learning Approaches 46 (1986). "As young children, delinquents are exposed to more punishment than non-delinquents. In fact, one could make a case for execessive parental punishment as one of the major causes of delinquency." Id. at 76. Physical and sexual abuse are common. One recent study of youth committed to the District's custody reported that almost 20% of the children had parents who were unable or unwilling to care for them, and for an additional 60% parental control was "inconsistent or ineffective." Many of the caretakers had serious substance abuse problems. Almost one quarter had a history of confirmed or suspected abuse. Robert F. Kennedy Memorial, At the Crossroads: Juvenile Corrections in the District of Columbia at 25 (March 1993). Other studies have reported abuse in a much larger percentage of cases. Down These Mean Streets: Violence By and Against America's Children: Hearing Before the Select Committee on Children, Youth and Families, House of Representatives, 100th Cong., 1st Sess. 6 (1989)(26-55% of institutionalized juvenile offenders have official histories of abuse). Hartstone & Hauser, "The Violent Juvenile Offender an Empirical Portrait," in Violent Juvenile Offenders: An Anthology, 89, 95 (1984) (30% of violent juvenile offenders have a history of family violence)

Ct. Juv. R. 2.[3] As a surrogate parent, the court system must couple discipline and custody with care. Care means giving a child who is struggling in school, who is sometimes emotionally out of control, more help. Much of the time, when people talk about prevention, they focus on children who have not been formally charged with delinquency. But there is no fundamental difference between the "at risk" child who needs extra help at school and the same child a few years later who never got the help and is now in trouble. Prevention cannot end when a child gets into trouble the first time, or the second time, or even the third time. As parents, we do not stop trying to teach our children important lessons simply because they do not absorb the information the first time it is presented. We know that learning, like change, takes not only caring, adult guidance, but repetition, consistency and time. This is as true of our children who are in the justice system as it is of those who the system will never see.

To illustrate this point, I would like to share with you the story of a young man who, from the surface might have appeared to be beyond any hope of redemption. This young man, who I will call Antoine, was the first juvenile arrested and charged in the District of Columbia Superior Court in 1993. He was charged with fifteen weapons offenses. According to an article by the Washington Post after he pleaded guilty, police seized six weapons, including an AK-47 assault rifle, a MAC-11 assault pistol, another assault weapon, and ammunition including shotgun shells, from this young man's car and home. At the time of his arrest, he was on escape status, having run away from Cedar Knoll. He had two previous adjudications, and was at Cedar Knoll on an assault with a dangerous weapon charge. In June of 1993, he was committed to the custody of the Department of

[3] This mandate derives from the first modern juvenile court established in Illinois in 1899. See Robert Mennel, Thorns and Thistles: Juvenile Delinquency in the United States 1825-1940 (1973) 127-32.

Human Services, with a recommendation for placement at the High Plains facility in Colorado, a tough maximum security facility for chronic and violent offenders. He was seventeen years old.

To all appearances, Antoine was the kind of young man towards whom "get tough" enforcement strategies would be aimed. See OJJDP, Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders: Program Summary 35-36 (1994). He grew up in the Trinidad neighborhood of Washington, an impoverished area plagued for the last several years by drug use and escalating violence. He did poorly in school. Many would have argued that Antoine should not be treated as a juvenile, or that he should be confined for as long as possible, which, under D.C. law would mean until age 21. He seemed to be the kind of young person who is most often written off when we talk about prevention. But Antoine was lucky. He had a lawyer who cared about him, and he was able to show the staff who worked with him at Oak Hill, the District's maximum security facility, that he had matured and wanted to get away from a life of violence and danger. In February 1994, after more than a year behind the razor wire and security fence at Oak Hill, Antoine was released. He entered a G.E.D. program run by the University of the District of Columbia, and moved into an apartment under a recently-instituted independent living program that teaches crucial, real life, skills -- such as shopping, cooking and budgeting -- under close supervision. Within a few months, Antoine completed his G.E.D. and enrolled in a barbering school where he is working towards a professional license that will enable him to earn a decent living. This summer, while school is out, he has a job in a barbershop.

On New Years' Day 1993, Antoine appeared to be one of the hundreds of young people who seemed destined to graduate from juvenile facilities to the adult correctional system. There seemed little reason for hope. Now, instead of Lorton

penitentiary, Antoine is headed towards a productive, law abiding life as a citizen and a taxpayer. I do not suggest that this change was easy, or that there is a simple formula to change every young person. But I can tell you that every juvenile lawyer I know has numerous Antoine stories to tell. And these stories tell us that we cannot afford to give up on our young people even when they do not learn the lesson the first time out. The stories tell us that children, even those involved in serious weapons offenses and gang activity, can be reached and changed. Yes, early intervention is important, but it can't be the whole story. We must work with the children who are already in the delinquency system if we are ever going to reduce violent crime.

I would like to begin on a positive note, by describing some of the progress that has been made here in the District of Columbia towards developing a juvenile justice system that provides services to young people and their families. After that, I want to outline some of the problems we face. I will conclude by offering ten specific proposals to improve the juvenile justice system in the District, so that it will become a model and an inspiration for the country.

I.

RECENT PROGRESS TOWARDS CREATION OF AN EFFECTIVE JUVENILE JUSTICE SYSTEM IN THE DISTRICT OF COLUMBIA.

The District of Columbia's juvenile justice system has been slow to change. Not until 1938 did the District establish a modern juvenile court, almost forty years after the first juvenile court was established in Chicago. Thorns & Thistles at 180. The last real reform of the District's juvenile court was in 1970. The Receiving Home for Children, a dilapidated facilities condemened as antiquated and unfit more than twenty-five years ago, is still in operation a few blocks from here. In fact, it is packed to overflowing with girls and smaller and more vulnerable boys.

As a result of a great deal of hard work, including efforts by the Justice Department Office of Juvenile Justice and Delinquency Prevention, the National Council on Crime and Delinquency, and the Robert F. Kennedy Memorial, there is now a broad consensus about the need to improve our juvenile justice system in the District of Columbia so that it better serves children and their families. At the recent D.C. Judicial Conference, participants ranging from prosecutors to mental health experts echoed the theme that prevention must begin early and must continue. The Chief Judge of the Superior Court has convened a task force, of which I am a member, comprised of professionals from a wide range of organizations to make recommendations for improving the system of services that the court provides to children and their families. The District of Columbia is also one of four cities chosen to participate in the "PACT" program, which brings together community leaders in a united strategy to curb violence. A consortium of church and community groups have united to form "Reclaim Our Youth," to increase community involvement in youth violence prevention. Already they have started a mentoring program for children in the delinquency system. In short, our community has begun to rally together to become one of the growing number of communities to implement on a broad scale the programs studies and statistics prove work.

In concrete terms, this consensus has produced a broader array of programs to help young people who have gotten into trouble find a way out. One example is the independent living program I mentioned earlier. This program helps young people who are old enough to live on their own to learn skills that most of us take for granted: shopping, cooking, cleaning, budgeting, job hunting. These are literally survival skills for many young people; without these skills, it is difficult to avoid resuming familiar patterns. "Many delinquent youths have difficulty reading and filling out job application forms, and thus, are stopped in pursuing a job even before

they begin." Stumphauzer, Helping Delinquents Change at 170.

Children who are placed in residential facilities outside the District of Columbia now enter a program designed to supervise and assist them when they return home. In the past, young people who spent months or even years in intensive therapeutic settings were released home with little support. They often found many of the same problems awaiting them that contributed to their delinquent behavior in the first place. The transition services program helps to make sure that both the child and the family are ready for the child's return home, and that special educational and emotional needs can be addressed.

Another program launched a few months ago provides very intensive supervision to young people arrested and awaiting trial. At the beginning of the program, a worker sees the child face to face three times a day. Services are geared to the individual needs of the family and the child. It is too soon to evaluate these programs fully but thus far they seem to have helped to prevent young people from committing new acts of delinquency.

II.

IMPEDIMENTS TO REFORM OF THE JUVENILE JUSTICE SYSTEM.

Despite the positive steps that have been taken, the District of Columbia's juvenile justice system has far to go. The District's two secure facilities are both severely overcrowded. At Oak Hill, the maximum security facility located in Laurel, Maryland, children are packed in groups of twenty into unventilated storage rooms. These last few sweltering days have been bad enough for those of us who work in air conditioned offices. They have been brutal for the young people at Oak Hill. Inevitably, heat and overcrowding breed tension and violence. The same is true at the Receiving Home, which houses girls and smaller, younger, or more vulnerable boys. Yet this overcrowding is not a result of an increase in the number of

delinquency cases. New delinquency case filings have remained relatively constant for the last five years, and actually decreased from 5,579 in 1992 to 5,300 in 1993. District of Columbia Courts, 1993 Annual Report 66 (1994).

One of the causes of overcrowding has been resistance to community-based programs and facilities. Some programs that were agreed to in a class action lawsuit seven years ago have just opened, others are still on the drawing board. Part of the problem is a public misconception, fostered to some extent by the news media, about what kinds of children are in the delinquency system. I would guess that most people believe that Oak Hill, a forbidding place surrounded by a fence with several rolls of razor wire, houses only serious violent offenders. But the truth of the matter is that there are children at Oak Hill for truancy, for driving without a permit, for simple assault. Every study of the District's confined children has reached the same conclusion: many of the children held in secure custody do not need to be there. Most recently, the Robert F. Kennedy Memorial and the National Council on Crime and Delinquency collaborated on a report which classified committed delinquent children. "The results of this classification process -- which was based exclusively on public safety criteria -- strongly suggest that the District of Columbia incarcerates a much larger proportion of youth than is necessary." Crossroads at viii.

The Mayor has called the District's secure facilities "warehouses," and this is a fair description. Instead of using confinement and 24 hour supervision as an opportunity to work consistently with young people on the attitudes and behavior which get them into trouble, the District's facilities offer little in the way of education or activity. Kids spend hours locked in their rooms because of staff shortages. School is sporadic, teachers are often absent, classes are cancelled because there are not enough staff to escort residents to the school. Many

delinquent children desperately need help getting back on track academically, but that help is generally not available at Oak Hill or the Receiving Home. Vocational and prevocational training is inadequate. There is not even enough physical exercise.

In my experience, all too often, instead of learning anything positive during their time in custody, children learn to be tougher to get along in the institution. They enlarge their network of friends involved in delinquent or criminal behavior. "Severe or prolonged punishment may foreclose the possibility of engaging in law-abiding behavior and produce a situation in which delinquents associate with each other and frequently engage in quasi-legal or illegal activities because they are systematically excluded from conventional activities that produce the types of social bonding that Hirschi and most theorists believe are critical to avoid criminality." Anne L. Schneider, Deterrence and Juvenile Crime: Results from a National Policy Experiment at 27.[4] These institutions reinforce the anti-social norms children bring in with them. Stumphauzer, Helping Delinquents Change at 4-5 And, they learn to survive "inside." Instead of preparing young people for life as productive citizens, the most enduring lessons taught in the institutions are preparation for life in jails and prisons. I personally have watched naive youngsters grow into hardened streetwise adolescents behind the razor wire fence that separates them from society.

My experiences tell me that these warehouses do not prevent crime. Instead, they reinforce self-images as outlaws. "The best predictor of intentions to avoid crime was a self image as a good citizen." Schneider, Deterrence and Juvenile Crime at 60. One study found that "incarceration and detention increased remorse, but also damaged the individual's self-image. These effects of punishment offset one

---

[4] See Clementa Bartollas, et al., Juvenile Victimization: The Institutional Paradox (1976)(describing dynamics of Ohio juvenile facility dominated by residents).

another, leaving punishment policies with about the same results as less coercive programs such as restitution and probation." Id. at 4. Kids who talk tough to earn a reputation inside a facility see themselves as tougher, and act tougher when they are released. Kids who spent months or years in a facility falling further behind in school, are even less likely to return to school to complete their education. Just as bad, the children locked up in such institutions learn not to trust, or for some, to further distrust, adults. They learn that the system, created and run by adults, that preaches accountability is not itself accountable. As one child asked me as we were sitting in my office at Oak Hill, how can they tell us that we have to go to school and get a job and then lock us up here where there is no school and no job training? I have never heard a satisfactory answer to that question. In sum, confinement does not make a delinquent child less likely to violate the law.

The empirical evidence supports what my eyes have surmised: a juvenile justice system built on harsh penalties does not deter crime. The District of Columbia has the highest per capita rate of children in custody in the country. Annie E. Case Foundation 1992 Kids Count Data Book 39. Yet there is a serious juvenile crime problem. Children over sixteen who commit violent crimes in the District of Columbia are automatically prosecuted as adults, and face sentences of life imprisonment. D.C. Code § 16-2301(3)(exempting from juvenile court jurisdiction minors charged by United States Attorney with enumerated offenses). But there is no evidence that fewer sixteen year olds are committing crimes than fifteen year olds facing prosecution as juveniles. In fact the evidence is to the contrary. Studies show that recidivism rates are lower for adolescents who are punished in juvenile court than for those who find themselves in the adult criminal system. See, e.g., Fagan, Jeffrey, "The Comparative Impacts of Juvenile and Criminal Court Sanctions on Adolescent Felony Offenders," final report submitted

to NIJ, June, 1991; White, Joseph, "The Comparative Dispositions Study," final report submitted to OJJDP, February, 1985. See generally Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders, at 32-33. There are many reasons why stiff adult penalties do not deter: but the first and foremost reason is because children and adolescents are impulsive; they do not do a cost benefit analysis before they engage in antisocial behavior. "A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered decisions." Johnson v. Texas, 113 S.Ct. 2658, 2668-69 (1993). "[D]uring the formative years of childhood and adolesence, minors often lack the experience, perspective and judgment to recognize and to avoid choices that could be deterimental to them." Bellotti v. Baird, 443 U.S. 622, 635 (1979). "Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents have less capacity to control their conduct and to think in long range terms than adults." Eddings v. Oklahoma, 455 U.S. 104, 116 n.11 (1982)(citation omitted).

III.

RECOMMENDATIONS FOR IMPROVEMENTS IN JUVENILE JUSTICE.

Before turning to specific proposals, I would like to talk about two ways that Congress could have a significant impact on violent crime by juveniles through general legislation rather than through reform of juvenile courts. Two things have a tremendous effect on the level of juvenile crime: guns and jobs. If fewer guns were available to children, the number of violent crimes would drop dramatically, and the seriousness of these crimes would also diminish. If more jobs were available to young people, the number of children who would fall prey to an underworld lifestyle would significantly decrease.

I have spoken to many young people who feel forced to carry a gun themselves because other people do. The situation is not unlike the one we faced during the Cold War: neither side was willing to disarm as long as the other had weapons. There are all too many children who carry guns, not to use them in robberies, but as a misguided means of self protection. The District of Columbia has strict gun control laws. It is illegal for an ordinary citizen to carry a concealed weapon, D.C. Code § 22-3204, and guns in homes and businesses must be registered. D.C. Code § 6-2311. Offenses committed with firearms are subject to special enhanced sentences and mandatory minimum terms. D.C. Code §§ 22-3202, 22-3204(b). Violations of these statutes are enforced. In 1993 there were 399 juvenile referrals for weapons offenses, although many of these did not involve firearms. District of Columbia Courts 1993 Annual Report at 79. I have not been able to obtain complete statistics on what happens to children charged with possessing firearms, because these statistics are not kept by the court or the Department of Human Services. The information I have been able to obtain confirms my anecdotal sense that most children who are charged with possessing firearms are confined, even before trial. A study of all newly detained children from February to March of this year showed that about 12% were detained for possessing a firearm without using it (10/83).

The unfortunate reality is that no matter how vigorously the District of Columbia enforces its own gun control laws, ready supplies of weapons are just a few minutes away. The availability of firearms is one of the most important factors in turning violent behavior by juveniles into homicides. More needs to be done to end the arms race on our nation's streets.

I also urge the members of the Subcommittee to consider ways to open the labor force to more inner city youth. "Children whose memories are storehouses of deprivation, neglect, or violence are robbed of the ability to cope with the present

or to envision a future bright enough to justify postponing immediate rewards. Children whose families were never able to convey a sense of being valued and a feeling of coherence are in a poor position to cope with the world of school or work. They are likely to be in deep trouble by the time they become adolescents." Lisbeth Schorr, Within Our Reach: Breaking the Cycle of Disadvantage 140 (1978). We must involve more of these young people in the work force, not only for their own sake, but for our sake, and for future generations. "Joblessness during youth may have a long-term harmful effect on later success in the job market." William Julius Wilson, The Truly Disadvantaged: The Inner City, The Unuderclass and Public Policy 44 (1987). "[T]he problem of joblessness for young back men," in particular, "has reached catastrophic proportions." Id. at 43. In the District, 16.1% of teens are not in school or in the labor force; this is the worst in the nation, and a 92% increase since 1985. Annie E. Casey Foundation, 1994, Kids Count Data Book 49. If we do not act to improve the employment prospects of teenagers now, there may be long term shortages of employable workers, and a long term supply of men and women accustomed to surviving by illegal means. And not only that, without a reduction in unemployment rates, too many inner city children in the next generation will grow up isolated from "the job network system that permeates other neighborhoods and that is important in learning about or being recommended for jobs that become available in various parts of the city." Id. at 57.

Prevention Outside the Delinquency System.

1. More recreational programs. Kids need to be kept occupied with stimulating activities. Many kids grow up in homes where there is no one to take them to after-school activities. Summer camp is not an option for most children in the District. School facilities could be opened in the summer and kept open late at night to give kids a way to spend time with friends and burn off energy and still feel safe. Many

cities have found that by expanding recreational options, they can significantly reduce juvenile crime. Trust for Public Land, Healing America's Cities: Why We Must Invest In Urban Parks (April 1994). Expenditures for recreational programs have actually decreased in the District of Columbia.

2. Expand diversion programs. Studies have shown that diversion programs prevent juvenile crime more effectively than incarceration. Anne L. Schneider, Deterrence and Juvenile Crime: Results from a National Policy Experiment (1990). In part, this is because children diverted out of the delinquency system are not "labeled" as delinquent. See William S. Davidson, et al., Alternative Treatments for Troubled Youth: The Case for Diversion from the Justice System (1990). Diversion programs should offer a wide array of services to children and families.

3. Housing for "at risk" families. One of the biggest problems children who enter the delinquency system face is not having a place to live. Many kids have several "home" addresses, because they do not really have a home. Many families "double up," leaving everyone crowded and uncomfortable. Children's Defense Fund, Bright Futures or Broken Dreams: The Status of Children in the District of Columbia and an Investment Agenda for the 1990s 75 (1991)(38% of black children live in doubled up households). Other kids cannot live with either parent, and stay with different relatives. This kind of physical displacement makes it harder for kids to get to school, id. at 79, and it contributes to feelings of emotional displacement. Id. at 80. The long waiting list for public housing and the lengthy delays in renovations have led to reliance on short term shelters to house homeless families. Id. at 86. Too many kids who are ready to be released from secure institutions have nowhere to go. In fact, the problem may be getting worse. According to a report released a few months ago, "although the number of single homeless adults has not increased, there have been persistent increases in the numbers of homeless families with

children." D.C. Action for Children, The DC Budget for FY 1995 (And FY 1994 Revised): What's In It for Kids? at 22 (May 1994). 31% of the District's children live in overcrowded housing. Annie E. Casey Foundation, 1994 Kids Count Data Book 48.

Prevention in the Institutions.

4. Short-term detention/diagnostic program. District of Columbia law requires children detained before trial or disposition to be separated from children committed after adjudication, D.C. Code § 16-2313(b)(3). But this is impossible at present. Detained children are housed at the Receiving Home and Oak Hill along with committed children. This makes it much harder to serve the distinctive needs of children who are detained before trial. We need to provide a program designed for detained youth who will stay in a facility for a relatively short period of time. I have in mind a program like one I observed at the Spofford Detention Center in the Bronx several years ago. Spofford had many flaws, but it was specifically designed to serve detained kids. Every child received prompt and thorough medical evaluation and treatment and an educational assessment. Educational programs were designed to make the most of the child's expected stay in the facility, especially since some of the detained children would be returning to school in the community. In the District, unfortunately, detention is to a large extent "dead" time. Little attention is paid to developing programs for detained youth, which only makes the task of treatment harder if the child is committed, especially to the same facility,

5. Adopt a consistent treatment philosophy for staff. Not every child should be approached in the same way, but it is clearly important for staff who have contact with delinquent youth to behave in ways that are consistent with treatment objectives. It does no good to have occasional classes on defusing confrontations nonviolently or controlling aggression, if the adults with whom confined children

have the most contact react aggressively to confrontation. Most children learn aggressive behavior in the home. To unlearn these patterns, they must have constant exposure to other ways of dealing with frustration or disagreement. The District's secure facilities have not adopted a consistent approach to treatment. One of my staff recently visited programs in Michigan for substance abusers and for sex offenders. In each program, the staff had clear treatment objectives which guided even their casual interactions with residents. The same is true of programs I observed in Alleghany County, Pennsylvania.

6. Advance treatment planning. One important feature of the successful Massachusetts juvenile system is planning. Barry Krisberg, et al., Unlocking Juvenile Corrections: the Massachusetts Department of Youth Services (1990). Institutional care is only a first step in a planned, gradual process of reintegration into the community. From the beginning, there must be some idea of what kinds of changes to look for in the child before progressing to the next step, and where that next step will be. All too often kids in the District of Columbia wait months after they have achieved their treatment objectives before planning for another placement begins.

Prevention in Community Programs.

7. PINS program. Under federal law, children in need of supervision are supposed to be housed apart from delinquent youth. 42 U.S.C. § 5633. But PINS children are held at both the Receiving Home and Oak Hill. To prevent PINS children from becoming delinquent children, PINS children should be housed in separate facilities. PINS children do not need to be trapped behind razor wire fences. The District recently established a facility for PINS girls. There is no comparable program for PINS boys.

8. Respite care. One important feature of good community programs is the

availability of "respite" care. Many teenagers are accustomed to rejection or abandonment by adults. It is important to be able to deal with inappropriate behavior without throwing a child out of a program, because that only reinforces the child's belief that he or she is worthless and unconnected to adults. Respite facilities allow for intensive treatment at times of crisis, while maintaining the continuity which is so important to effective intervention.

9. Girls program. If we are to prevent delinquency in the next generation, we must begin by helping today's young people learn the skills they will need to be responsible parents. I do not mean to suggest that this needs to be done for girls alone. But it is the reality that girls bear the brunt of teenage pregnancy and child rearing. Girls need a program geared to them: a program that would help develop independent living skills, promote healthy relationships, teach sexually transmitted disease prevention, prenatal care, and parenting.

10. Family Based Services. The most fundamental thing about being a parent is assuming the responsibility for a child in sickness and in health, rich or poor. Even a "dysfunctional" family is usually a child's most solid foundation for the future. Social workers, teachers, mentors, are important. But is the family that will be there after the commitment expires or the program ends. Family conflicts that are not resolved will frustrate the most diligent efforts of the experts. We need to do much more to build up family foundations.

Mr. SCHUMER. Mr. Murphy.

STATEMENT OF PATRICK MURPHY, COOK COUNTY PUBLIC GUARDIAN

Mr. MURPHY. You have my prepared remarks. I would like to respond in my 5 minutes to what I have heard going on here today.

Since 1968, I have either—since about 1964, I have either prosecuted or defended adults or prosecuted or defended children. The last 10 years or so, I have represented abused and neglected children in Cook County. Between 1966 and 1976, I was either a Peace Corps volunteer in Somalia or a legal services lawyer on the west side of Chicago. During that time we filed a lot of cases and lobbied for legislation so that we wouldn't be blaming the victim. And what we did was remove responsibility from the law; and if anything, that has shown, in the last 25 years or so, we were wrong. Responsibility should be a part of any system. You cannot take away responsibility.

I would like to refer briefly to just a couple of matters. On May 17 of this year, the New York Times ran a front page article on 15 kids—I am sorry, 26 children between the ages of 13 and 15, charged with murder. Of those 26 children, only 4 had fathers involved with them. That is what we see, whether it is abuse or neglect, or on the delinquency side or the juvenile court, there are no dads, there were no dads in 1964, there were no dads in 1966, and there are less dads today.

If anything, what we should be sitting up and thinking about is when now Senator Moynihan in 1966 gave his report, which we all ran away from, claiming it was racist, where he said that the number of fathers in the home was only 25 percent in the African-American community at that time. He was concerned it would go up; and now we know it is 66 percent in the areas of the underclass. The juvenile court is an underclass court.

If you take all races and all economic strata outside of the underclass, the amount of delinquency and abuse and neglect is identical. But once you get to the underclass, which is this class of people who are condemned to lead horrible lives because of a stupid welfare system and also because of lack of jobs, which my grandparents when they got here from Europe who are now in Asia, things were crazy.

In Chicago recently, in a case I was personally involved in, we had 19 children living in a home with 5 mothers and they were bringing in $5,500 a month in welfare benefits, and yet these kids were living in absolute squalor. As it turned out, these 5 women had 23 children by 17 fathers and what future was there for these kids, or is there?

The worst part of my job is going into court and representing a 5-year-old kid or a 9-year-old kid or seeing other kids there with all the potential of my 12-year-old son, who sit behind me here and who could go on to become Congressmen or lawyers or nuclear scientists, that I know when I look at them they are not going anywhere.

How do we resolve the problems in the system? Once they are in the system, you have to have responsibility. Any time a kid has a gun, he should be locked up as far as I am concerned. The only

way to do something about it is to get the message out to the community: We do not tolerate guns under any circumstances.

But the other thing is, we have got to do something about this phenomenon we have created, all the underclass. If we do not, I don't care, you could spend billions of dollars that Mr. Scott is talking about in rehabilitation, or billions of dollars in prison; it ain't going to make no difference. These kids will flow into the system, because we have set them up from the time they are born. And I can tell you, I see them and I look at them, and I know it is not going to make any difference if we lock them up—although I agree that we should lock them up if they rape someone, whether they are 13 or 17—and it is not going to make a difference if we preserve their lives with housekeepers, because their lives are over.

We should have a welfare system that does not encourage illegitimacy in 13- and 15-year-olds; it doesn't work. I read in Parade Magazine, the Children's Defense Fund, Marian Wright Edelman pointed out that if it is wrong for 13-year-old inner-city girls to have babies without the benefit of marriage, it is wrong for celebrities, too. That is hogwash. If a woman of 25 or 30 wants to have a child and can afford it, then she should do it. But if a 13-year-old kid wants a child—and we see it all the time; a lot of kids see this as their ticket out of the ghetto. Instead it is the ticket into the deeper ghetto to have a child or children.

Now, we don't think that, but we are not 13-year-old kids living in a high-rise slum housing project. For them, hey, if I get a kid, I am away from this situation. I may make it. And they wake up at 22 years old with four kids, and they realize their lives are over. They turn to drugs as a cheaper alternative to a trip to Vermont or a trip to the shore, and their kids end up being abused by their parent or end up in the can.

We have to do something about this problem. Unless we do, it is all going to be there and worse 20 years from now. Thank you.

Mr. SCHUMER. Thank you, Mr. Murphy.

[The prepared statement of Mr. Murphy follows:]

TESTIMONY OF PATRICK T. MURPHY,
COOK COUNTY PUBLIC GUARDIAN TO THE
HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE
SUB-COMMITTEE ON CRIME AND CRIMINAL JUSTICE

My name is Patrick T. Murphy. I am the Cook County Public Guardian.

The Cook County Public Guardian's Office acts as the guardian for elderly individuals suffering primarily from Alzheimer's and organic brain disease. We take care of these individuals and their estates which total over fifty million dollars. We also represent as attorney and guardian ad litem some children in divorce cases and the 31,000 abused and neglected children in Cook County. I have been practicing law since 1964 and have been actively involved in representing youngsters in the juvenile justice system since 1968. The Public Guardian's Office has approximately 130 lawyers and 30 social workers and investigators and a staff overall of 250.

In my legal career, I have prosecuted felony felons and represented as criminal defense counsel both adults charged with felonies and juveniles charged with delinquencies. I have also represented abused and neglected children. I have tried cases successfully in every division of the Circuit Court of Cook County and in the United States District Court. I have also successfully argued cases at every state and federal appellate level including the United States Supreme Court.

Between 1966 and 1974, I worked in a variety of new frontier and new society programs including being a Peace Corps volunteer in Somalia and working as a legal services lawyer on the west side of Chicago. In fact, I began representing abused and neglected children and delinquent children in 1968 and, for most of the twenty six years since that time, I have been intimately involved in the juvenile justice system in

Chicago. I wrote a book about these experiences in 1974 which initially Viking Press and later Penguin Paperbacks published. The most depressing part of my present job is my knowledge that the system is much worse today than it was twenty six years ago. And I cannot help but believe that in part everything is worse because many of the reforms and programs that both myself and others like me championed in the sixties and seventies.

Of course, change was needed and much of what we litigated and lobbied for was good. But by negating individual responsibility, we often ended up hurting the very people we sought to help. Statistics in Cook County reflect the problems. In 1972, there were 18,756 delinquencies filed and approximately 2,500 cases of abuse and neglect. Others and myself argued that these numbers were inflated because many of the 18,000 delinquencies were in fact relatively minor crimes which should never have been prosecuted. We also argued that at least some of the 2,500 cases of abuse and neglect were in court fo rreasons associated with poverty.

And the system listened to us. Five years later in 1977, there were only 10,400 delinquencies filed in Cook County and 1,938 cases of abuse and neglect. However, from that point on, the numbers increased dramatically. Ten years later in 1987, almost 14,000 delinquencies were filed in Cook County, and by 1993, over 17,000. More importantly, new cases coming into the system not only did not include minor cases but frequently serious crimes were purposely kept out of the system because the system was becoming overwhelmed with the more serious crimes.

So too with abuse and neglect. The 1,900 abuse and neglect cases in 1977

Circuit Court judges to the Appellate and Supreme Courts of Illinois, and has filed civil rights suits against the Department of Children and Family Services in the federal courts. The Public Guardian has obtained over one million dollars in damages on behalf of children abused by the Department of Children and Family Services. The Public Guardian has also prevailed on a number of appeals which has changed the nature of juvenile courts. Most recently, the Public Guardian prevailed in a lawsuit in federal court against DCFS and the County of Cook. In this lawsuit, DCFS agreed to pay the County a half a million dollars a year so the County could hire eight hearing officers to assist the judges at Juvenile Court in hearing abuse and neglect cases. As part of the settlement, the County agreed to also put an additional six judges to hear abuse and neglect cases at the Juvenile Court. (See both the booklet on the Public Guardian's Office and the attached articles.)

Patrick T. Murphy has successfully argued at all appellate levels of the state and federal judiciary including the United States Supreme Court. He has tried bench and jury trials in every division of the Circuit Court of Cook County and in the United States District Court for the Northern District of Illinois. He has written many articles, one book and has received a number of awards including the 1990 American Bar Association Juvenile Justice Award, the 1972 Governor's Criminal Justice Award, the 1975 Distinguished Service Award by the National Association of Youth Bureaus and the 1971 Reginald Heaber Smith Award given to one legal services lawyer nationally for outstanding services.

tripled to almost 5,800 in 1987 and to over 6,500 in 1993. More ominously the number of children in foster or substitute care because of abuse and neglect sky-rocketed. Between 1983 and 1986, the number of children in foster or substitute care in Cook County remained relatively constant at approximately 8,300. Indeed, in 1986, the number decreased from 8,300 to 8,000. But after that, children poured into the system and, worse, stayed in teh system. Today, over 30,000 children in Cook County reside in foster or substitute care.

These numbers reflect the national trend. In 1986, there were 262,000 children in foster or substitute care. In 1993, that number approached a half a million.

Most of the cases coming into the juvenile justice system are from the underclass. But they are not being brought into the system because the people are poor. Crimes are being committed, usually against other underclass people and children are being very seriously abused and neglected, and these children are not the children of the middle class.[1]

Robert Benchley studied law before he recognized the folly and irony in much of what goes on in our legal system and became a humorist. Confronted with a question concerning a fishing rights dispute between the Norwegians and English, Benchley wrote that while many academicians and scholars had written about the

---

[1]In a later section, I deal with the problems of the underclass. However, while agreeing that the problems and pressures of an underclass existence certainly contribute to both delinquency and abuse and neglect, the vast majority of the very poor do not abuse or neglect their children and do not commit crimes, but in fact very poor parents normally do an outstanding job under the most difficult circumstances possible of raising their children.

fishing rights from the point of view of the Norwegians and an equal number had written about it from the point of view of the British, up to that point no one had written about it from the point of view of the fish. Benchley then proceeded to write about how the fish felt about being fished upon.

In Benchley's story the fish were the victims while the Norwegians and the British were the bad guys. I would like to apply Benchley's story to the juvenile justice system and argue that we should pay attention to the fish and not the bad guys. But in the juvenile justice system all the parties are fish. There are the victim fish, the old ladies and young kids brutalized by adolescent thugs; there are the misunderstood adolescent fish who turn to crime because they are the victims of poor education, joblessness, an uncaring society and poverty. We also have the ten month old kid fish tossed against the wall and the eight year old girl fish raped by her mother's paramour. These are victims but also, according to the child welfare philosophy, the parent is a victim of frustration caused by drug abuse or alcoholic abuse or spousal abuse caused by societal pressures and poverty.

Of course there is a bad guy in this scenario. Society.

Responsibility, real responsibility, is rarely demanded either from the juvenile delinquent or from the neglectful or abusive parent. The juvenile justice system exists to rehabilitate the abusive parent or the delinquent, and the system continually calls for more resources to assist the rehabilitation. Rehabilitation is the goal. But the victim of the delinquent's crime and the child abused by the parent does not need or demand rehabilitation. Therefore, the focus of the system turns to helping the

wrongdoer while the delinquents are forgotten about and cast aside as unimportant to the whole process of rehabilitation.

Changes must be made in the juvenile justice system to ensure that individuals take responsibility for their acts:

1. Presently most jurisdictions do not distinguish between misdemeanor and felonies committed by children. A child can commit a serious crime such as sexual assault, burglary, or armed robbery and theoretically be treated more leniently than a child who has committed a relatively minor crime. If the felon takes to "rehabilitation" more easily, the felon may conceivably be treated much better than the misdemeanant who does not take easily to the system. (On the other hand, in most major cities today, many minor crimes are never brought into court because the police feel it is a waste of time.)

Most jurisdictions today permit the removal of an adolescent who has committed a serious crime, usually murder, to the criminal justice system. However, the vast majority of juveniles are tried in the juvenile justice system where there is no distinction made between a felony and misdemeanor. I do believe that we should set aside as juvenile felonies such crimes as aggravated assault, non-consensual sexual acts and any act involving a firearm, including the mere carrying of a firearm. I would also include as a felony any assault resulting in a serious injury or an assault on an elderly person.

Most other crimes including all crimes committed for children under 12 I would treat as misdemeanors. If a serious crime is committed by a child 11 or 12, I would

permit a juvenile court judge to treat that child as a juvenile felon for good cause shown.

2. In most jurisdictions, abuse and neglect cases and juvenile delinquency cases are mixed together in the same building and even in the same courtroom. Since the child welfare system sees no difference between a 15 year old hooligan who has raped or maimed, or a five year old child who has been raped, there is no need to segregate them into different courtrooms or court buildings. But if the world is looked at as it really it rather than through a looking glass, we know there is a difference. The five year old or the two month old cannot protect him or herself but must rely upon the parent. If that parent abuses or neglects the child, then child needs the protection of the courts. The mixing of the two populations at times results in the abused and neglected child being treated as a delinquent while the delinquent gets treated as a poor, neglected child.

3. The juvenile justice system, for the most part, is surrounded by a wall of confidentiality which makes those surrounding the C.I.A and F.B.I look puny by comparison. Based upon my experience, I believe these laws exist today for the most part to protect inept bureaucracies and timid judges from scandal. The more the public knows about what goes on inside government and the courts, the better government and the courts operate. Secrecy in government breeds mediocracy and negligence. Openness and public scrutiny ensures excellence. I believe that for the most part the media should have unfettered access to juvenile proceedings and records.

4. The entire juvenile delinquency system including both felony and misdemeanor should be part of the criminal justice system. This does not mean that juveniles would be tried in the same courtrooms with an adult nor that juveniles would be incarcerated in adult prisons or be part of adult probation. Also, the penalties for juvenile offenses should be much different and more lenient than those for adults. But I would set specific penalties.

DEALING WITH THE PROBLEMS OF THE POOR AND UNDERCLASS

I am a lawyer who goes to court and I supervise other lawyers who go to court. We represent children who have been abused and neglected. The overwhelming majority of our clients are from the so-called underclass.

And I read about the growth and ossification of the underclass, high school drop-out mothers having children by uninvolved fathers living off AFDC and food stamps as did their moms and grandmas before them. According to a recent book written by two H.H.S. staffers, "People who stay [on welfare] eight years or more account for more than half of the people on welfare at any point in time." But most of these mothers do try even though the stack is decked against them and they face questionable futures. The procreators, fathers, most often ignore their responsibility with tragic results for their children, particularly their sons.

The May 17th edition of the *New York Times* ran a two page spread on 26 kids between the ages of 13 and 15 charged with and/or convicted of murder in New York City. Of the 26 children, 20 had no father in the home. In two instances, the profiles were silent as to whether or not there was a father. In only 4 out of 26 cases was a

father involved with a child.

A typical abuse and neglect case at Juvenile Court involves a mother who had her first child when she was a teenager and who was on AFDC as a child herself. By the time she is in her early twenties, she has had several children by more than two fathers, dropped out of high school, and lives off AFDC benefits and food stamps. She begins to recognize that her future is bleak and turns on to drugs as a cheaper, albeit deadlier, alternative to a trip to Vermont or the shore.

One of her drug suppliers becomes her paramour and begins to abuse her and/or her children. Because of her need for drugs and companionship, she takes the abuse herself and looks the other way when it is heaped upon her children. Or if there is no paramour, she just drifts slowly into the drug culture, using government benefits meant for the children for drugs and turns to occasional prostitution. She may leave her children alone for a day or days or live in the home but abandon them mentally, physically and financially.

Earlier this year, we had an extreme example of this. Five mothers and their 19 children lived in a small apartment on Chicago's west side. When police entered the flat on a drug raid, they found only one parent home at two in the morning while children slept on the floor in squalor. Two toddlers fought with the dog over a bone. Welfare groupies argued that the women were merely the victims of poverty. However, the women were taking in over $5,500 a month in AFDC and food stamps.

In the delinquency side of the court, things are not better. It is a rare case where one finds an involved father. I have not represented a delinquent in a number

of years. However, in all the years I did represent delinquents, I can recall only one case in which there was an involved father. In that case, the boy, about sixteen, was charged with the stabbing on an el platform. It also is one of the few cases that I can recall where the kid turned around immediately. The main reason for that was the involvement of his father. Raising adolescents is an exceedingly difficult job for the best of parents and for the parents who have the most time and most resources. It can become close to impossible where the mother does not have the support of a male companion and where the son does not have the discipline and direction which most often only a father can give.

I read about two approaches to welfare reform. One, the Charles Murray approach, would do away with it entirely. I do not understand how anyone can take this approach seriously. Many, despite their best efforts, cannot compete in an economy in which industrial jobs my grandparents worked when they came from Europe have been exported to Asia. Others may have some fault for their plight but they are adequate parents. And a just society should not penalize children for the sins of their parents.

The other approach to welfare reform is the one more or less championed by the Administration. The problem with much of this seems to be a continuation of the sloppy thinking of the sixties and seventies which negates individual responsibility in favor of entitlement funds to the very poor. Just last year, a University of Chicago economist won the Nobel Prize for telling us the obvious -- that most families make most of their decisions based upon micro-economic realities. Our welfare system

works on the opposite theory. We actively encourage irresponsible behavior.

For instance, based on my experience, I believe that AFDC benefits and food stamps encourage some young girls to have babies. From the perspective of highly educated congressional aids, this is ridiculous. But fourteen year old girls in housing projects who have babies are not middle-class academicians. They see the few bucks they get from AFDC and food stamps as a ticket out of the ghetto only in the long run to discover it is a ticket to the deepest recesses of the underclass.

Some apologists even try to equate out-of-wedlock teen births to out-of-wedlock births in general. Writing on Mother's Day in *Parade Magazine*, Marian Wright Edelman of the Children's Defense Fund stated, "And if it's wrong for 13 year old, inner city girls to have babies without benefit of marriage, it's wrong for rich celebrities too." If a mature and relatively responsible woman wishes to become a parent but has no man in whom she is presently interested, (or if she is gay), I see no reason why that woman should not have a child. Thirteen (or fourteen or fifteen or sixteen) year old children should be skipping rope, playing volley ball, dating and navigating their way through school and the tempestuous seas of adolescence and early womanhood.

Our welfare system ignores the microeconomic reality propelling most family decisions. Instead, it rewards irresponsible behavior even it is counterproductive for the mom and the children. The administration's approach appears to be one more step in that direction. The message to the high school sophomore is so what if you will have no companion to help raise a child, you will get welfare benefits for at least

two years. At that point, society may turn around and reward you with further educational benefits, babysitting and perhaps even a job. We know the problem. We know that boys and girls born to teen moms without an involved father are more likely to be abused or neglected or criminals or end up on welfare or certainly have a desperate future. We also know what teen moms do not know when they start having babies -- that for all practical purposes their lives are over. So why should we continue to encourage behavior which is horrible for the parents, worse for the children and counterproductive for society?

That is the question which runs through my mind as I sit in court and see kids taken from moms who try but fail, or given back to moms who will continue to neglect their children and see boys and girls about the same age as my own two sons and with the same intellectual ability but whom I know have no chance.

Since we know that children born to high school drop out teen moms without an involved father will generally do more poorly than other children, the goal of welfare reform should be to try to discourage and prevent these kinds of births. Educational programs begun in the last ten years or so emphasizing the evils of drug, alcohol abuse and smoking are beginning to pay off. Similar programs emphasizing the pitfalls of unwed teen parenthood and the need for responsibility from men toward their children should be emphasized and taught from preschool on up. Some argue that this is an insult to children who have unwed moms and no involved father. These kids already intuitively know first-hand their problems. Besides, many children taught the evils of drug and alcohol abuse have drug addicts and alcoholics as family

members.

- Family planning, education and resources, including abortion services should be readily available upon demand to all, rich, poor, middle-class, male and female.

- AFDC and food stamp benefits should be denied to most unwed mothers of high school age. Instead, a guardian payee should be appointed who would also have prime responsibility for assuring that the infant is well cared for.

- Rather than the two years and out, I would set a criteria that, with certain exceptions, no one would receive AFDC benefits for more than two children after they have been on benefits for two consecutive years. This would put into place microeconomic realities to an individual up front. It will also target those 50% of welfare recipients who have been on welfare for more than 8 years.

Welfare reform is a controversial subject. But reform which rewards irresponsible behavior is counterproductive. All avenues of reform must begin with the "R" word. If it encourages responsible behavior it is good. If it discourages irresponsible behavior it is good. Encouraging irresponsible behavior costs us, the taxpayers, nickels and dimes. The costs to children are lives which could be satisfying and pleasurable but instead are worse repeats of their parents' lives which of course leads to the downward spiral and growth and ossification of the underclass.

Mr. SCHUMER. Judge Mitchell.

STATEMENT OF DAVID B. MITCHELL, JUDGE, CIRCUIT COURT FOR BALTIMORE CITY

Judge MITCHELL. Neither the criminal nor the juvenile justice systems alone are the solution to the problems of crime in America. At best, these systems function as temporary repositories for the offender.

America has asked the juvenile justice system to act as an ambulance that is positioned at the bottom of the Grand Canyon. The justice system must wait until the youngster at the head of the line lands at our feet after leaping from the cliff above before it administers recuperative, rehabilitative measures. We are told that we should not concern ourselves with the constant flow of young people who queue up on the cliff above. The fact that the juvenile system is incapable of resuscitation of every patient who falls at its feet is presented as another example of its failure.

We know that certain methods of treating young people work to correct aberrant behavior. It quite simply is a presence in the environment of the child of discipline, structure, love and values. The environment emphasizes to the child that he or she has a place in the constellation. Adults in that environment model a moral and physical sense that is supportive of the child and emphasizes the point that behavior precedes reward. What I describe can represent a family, the religious community, or a treatment facility that is not limited to its placement in the community or an institution. Glen Mills Schools in Concordville, PA, and soon to open in Florida, runs large facilities that deal with hundreds of juvenile offenders in an institutional setting. Graduates of this facility typically succeed because they see success modeled around them and their success is expected.

The Associated Marine Institutes of Tampa, FL, of which I serve as chairman of a 600-member national board of trustees, operates 40 juvenile treatment facilities in eight States and one foreign nation. The facilities range from those who work with violent, serious juvenile offenders in a residential setting to treatment facilities that are located in communities throughout America. The staff of AMI, whether it is a person who prepares the meals, drives the bus, or is the executive director, are counselors for the offenders and they model values that we want all kids to follow. The consequence is that AMI treats the kid and not the offense.

A few years ago, the U.S. Secret Service became justifiably alarmed when a resident of a Virginia juvenile training school wrote the President of the United States and in no uncertain terms told him what he intended to do to him, the First Lady, and the first animal, if he ever got free. The initial reaction was to charge the youngster with the obvious and bury him under the jail. Cooler heads intervened who were no less concerned with the implications of the threatened behavior and arranged for the youngster to participate in an AMI treatment facility for serious offenders who are referred by the criminal justice system.

After 1 year of treatment designed to restore a broken, disheartened youngster who missed parental involvement in his life to a functioning citizen in this country, we can report that this man

lives in another State with his father and stepmother and contributes to helping other children. He is not finished yet, but he is a farsight further along in that effort than he would be if incarcerated in a Federal institution.

I close with a case I tried yesterday. It was neither a criminal nor a juvenile matter—excuse me, a delinquency matter. The case involved a 2-year-old boy, a 10-month-old girl, and the 6-week-old sister of both of those children. They were before the court as abused and neglected children. Both mother and father were brought to the court from the Baltimore City Detention Center—you can spell that "jail." When their 2-year-old child was brought into the courtroom by his social workers, he exclaimed with the most wonderful joy, "Daddy." He embraced his father, but we had to pry him away because of the obvious security concerns.

Well, Mr. Chairman, there were few dry eyes in that courtroom. We wept for the children. What did they face in life with parents who were incarcerated? We wept for ourselves. What future did we face with these children of an incarcerated mother and father? Why are we holding family reunions in court?

I ask you for what Judge Cy Whitfield of the Circuit Court for Harford County, MD, my colleague and dear friend asked of all legislators. Give us good families, and we will solve the problem of juvenile crime in America. Deal with prevention at the earliest point. Erect a barrier at the cliff and stop the unwarranted, unnecessary and unprecedented entry of children into the criminal and juvenile justice systems.

Mr. SCHUMER. Thank you, Judge.

[The prepared statement of Judge Mitchell follows:]

Testimony of
the Honorable David B. Mitchell
of the Circuit Court for Baltimore City
Division of Juvenile Causes
Before the Subcommittee on Crime and Criminal Justice
House Judiciary Committee
July 14, 1994

Chairman Brooks and members of the Subcommittee, I am pleased to be here today to offer my perspective on the treatment of juveniles in the justice system. I am an appointed and elected official in my community, and have served as a circuit court judge in Baltimore City, Maryland since 1984. Shortly after my appointment to the bench, I began my tenure as the Chief Administrative Judge in the Division for Juvenile Causes. I have served in that capacity without interruption for the past ten years. Contrary to frequent assumptions by certain members of the judiciary, I volunteered for this task; it was not thrust upon me as penance for a political maneuver gone awry. I come here today not to apologize, but as an unabashed, brazen advocate for the juvenile justice system.

Judges, like myself, who serve the juvenile courts of this nation, are a different breed. We take the position that our responsibilities are not confined to the paneled walls of the judicial chamber. We lend an activism to our communities, striving to energize and enlighten the people to the plight of our nation's struggling children and families. Our goal is to provide a course of treatment and rehabilitation to the youthful offender, while maintaining a watchful and consistent check on the public safety.

Admittedly, there are problems. I am prepared to admit that there are some children who cannot be rescued. Some are forever destined to be a burden on society. For those offenders I see, whose juvenile court file is eight inches thick, I will sadly concede that their rehabilitation is probably fruitless. And, in the interest of public safety, I show no hesitation in promptly relegating them to the little juvenile prisons that exist for the purpose of housing children. There, unfortunately, they will network, and make contacts for future criminal activities at a cost to the taxpayers of about $60,000 per year.[1] Little is done to effectively transform that youthful offender to a contributing citizen. Few programs exist in the nation that are designed to make locked, chained, and barred juvenile training schools markedly different in any way from their adult counterpart. The rate of recidivism in these institutions regularly shows as 80 to 90 percent. The only thing that imprisonment accomplishes, at either the juvenile or adult level, is removal of that person from society. It provides protection for potential victims for a period of time. It is not a deterrent. Fortunately, these children comprise less than 20% of the delinquents in the juvenile system.[2]I

---

[1]Time, January 27, 1992, p.55.

[2]One of the first studies of recidivism was by Marvin Wolfgang, who found that only 18% of those arrested for delinquent behavior persisted in these activities; that statistic was corroborated in a later study by Lyle Shannon. Source: National Council of Juvenile and Family Court Judges (NCJFCJ), University of Nevada, P. O. Box 8970, Reno, Nevada, 89507, (702)784-6012, FAX (702) 784-6628; Wolfgang, M.E.; Figlio, R.M.; Sellin, Thorsten. Delinquency in a Birth Cohort. Chicago: University of Chicago Press, 1972.

am here today to talk about the vast majority of juveniles, at least 80% of whom can be affected in a positive way. In the course of my dealings outside of juvenile court, I am frequently asked if I am still working with juveniles. When I say yes, the inevitable response is, "That must be so depressing." I respectfully disagree. What is depressing is to see people deteriorating in adult prisons. Only with fundamental change can the juvenile justice system and its children be saved.

At present, the citizens of this country have little patience for juvenile delinquents. They demand retribution. I attribute this stern crusade to fear. With newspaper headlines screaming of random shootings, murder, drug dealings and vandalism, the fear of crime, especially juvenile crime, is justified and understandable, albeit misplaced. The caning of an American youth in Singapore brought applause from Americans across the country. Americans are scared. Yet I can assure you all, this monstrous fear dissipates when it is confronted on a human level. Most of the children brought into the system are here because they have committed an act of delinquency; i.e., an act that would have been a crime were it committed by an adult. However, from my experience, most of the delinquent acts that I adjudicate are not of such dire magnitude.

I most frequently see misdirected kids, who have little or no parental guidance, engulfed in the pathetic family situations that chaperon poverty. Poverty, abuse and neglect are poor role models. Kids begin to act out; they do poorly in school and begin to miss classes. When they are truant, they have far too much free time.

In a spiraling downward cycle, they fall behind in their studies, and lose all confidence in themselves, only to prove themselves "worthy" by stealing a car, vandalizing, shoplifting, or more dangerously, dealing in drugs. This is the turning point; this is the moment at which a prompt reprimand would be most effective in deterring future delinquencies.

If only we could intervene at this point, it would undoubtedly change the outcome in the life of a child. If there was effective attendance monitoring, at least the problem would come to light before the situation worsened. However, The Office of Pupil Placement in Baltimore City's education system is the subject of staff reduction rather than augmentation. Despite the statewide definition of "habitual truancy" as thirty days absent in a school year, juvenile court intervention does not occur until more than 120 days of absence out of 180 has been reached. Even then, the education and judicial systems are devoid of resources to effectively change a child's life.

If it were a perfect world, the parents of these children would step in at the point of crisis. The parents would provide measured, even-handed discipline; they would help their children with their homework every night and ensure that they go to school every day; they would provide moral and spiritual guidance; and a decent home environment, with nutritious meals, and a bedtime story every night. Additionally, the mother would have partaken of early health care measures to ensure effective prenatal treatment, including drug rehabilitation on demand, if necessary.

If only it were a perfect world. All too frequently, however, the parents are not in the picture. I have seen this scenario at least a thousand times: father is completely absent; mother is on drugs. So who is left to shoulder this parental burden? Enter, The Juvenile Court, the parens patriae. [3]

The problem of juvenile delinquency can be broken into two broad categories. First, there are societal problems; problems of which you, the legislators of this country, are painfully aware, such as truancy, illiteracy, dependency upon welfare, poor housing, inadequate heath care, spouse or child abuse, and drug abuse. Children who are themselves abused, lose all sense of what is just or fair. For every delinquent child that appears before me, I guarantee the existence of at least one of these problems.

Another societal problem that is gaining momentum is the lack of appropriate foster care for children who need a temporary home. There are simply not enough families willing to house children whose parents' are undergoing rehabilitative treatment. Just last week, I heard an emergency shelter care argument for a little girl who desperately wanted to go back to her foster family. The Department of Social Services argued against sending her back to this family for two reasons. First, they argued, she was the eighth child in that foster family. Secondly, she was not related to the foster parents. The little girl, who was about eight years old, sat before me with tears streaming down her cheeks, her body

---

[3]Literally, parent of the country. Black's Law Dictionary, Fifth Edition, p.1003.

twisted up like a pretzel. She had all her fingers crossed, she had her arms crossed, she had her legs crossed, and probably her toes as well. All this "crossing," no doubt, was to bring her luck, because she really wanted to go back to this particular foster home. I could not help but think how sad her situation was. She desperately wanted to be placed in a seriously overcrowded, but loving, foster home. Foster parents are a scarce resource. I wonder if they are fearful of accepting the responsibility of foster care children because of potential legal liability or simply because of the magnitude of the obligation. In any event, we need to address this issue, because without adequate foster families, the courts have little choice but to place these abused and neglected children with the very relatives who raised their battering parents.

Secondly, there are systemic problems with the juvenile justice system. This system is overwhelmed by the sheer number of its constituency. The juvenile court has been given neither the attention nor the resources to remain current with the issues it was called upon to confront. Judge Milton B. Allen, my former colleague and predecessor on the juvenile court, likened our task to "driving a railroad spike with a tack hammer." As a consequence, the juvenile court cannot keep pace with the problems of the moment. It literally functions in a pen and quill environment. For example, only three months ago did my court finally gain the benefit of a computerized court docket system. Previously, everything was done manually, despite the fact that we

regularly handle over a thousand juvenile cases per month.[4] This situation is mainly due to a lack of leadership in the judiciary and the indifference of the political community to the structural needs of the juvenile court. Additionally, the adult criminal justice system is a glutton. It is estimated that the juvenile justice system gets less than four percent of the funds that are allocated to the criminal justice system.[5] The net result is that the juvenile justice system has been left ill-equipped to respond to the present challenges.

The focus of current "waiver" legislation, to reduce the age at which a child may be treated as an adult in the criminal justice system, exemplifies the progression of this oversight. Intrinsic in that legislation is the belief that a child will be "handled properly" in the adult system. Please do not foster the belief that the juvenile justice system is ignorant of public safety concerns. Unless you understand what we do, how can you support a law that restricts our jurisdiction and perpetuates the myth that juvenile delinquents have found a haven in juvenile court? No one is coddling these youngsters. I do not consider a sorrowful upbringing to be justification for committing a delinquent act. I, too, have a family to protect; I, too, am a parent.

This depreciation of the juvenile court is exacerbated by the

---

[4]This figure includes non-delinquency abuse and neglect proceedings involving children.

[5]Excerpt from testimony of Hon. James M. Farris, National Council of Juvenile and Family Court Judges, before the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, House Appropriations Committee, April 27, 1994, p.3.

closed nature of juvenile proceedings. People are naturally suspicious of what goes on behind closed doors. I believe that fact-finding hearings involving juveniles charged with criminal law violations, as well as waiver hearings, should be open to the public. I wish that every member here today would spend a day in juvenile court. I invite you and your staff to contact the juvenile court judge in your community. That judge will welcome your attendance, and allow you to see what really occurs. Do not rely upon what you read or hear from someone else; research it yourself. I submit that the juvenile court system is filled with dedicated, hard-working, intelligent people who believe that most children can be rehabilitated.

We need to change our focus. We are the substitute parents, whether we like it or not. So I believe in a common sense, parental approach. Fair-minded treatment, with a particular emphasis on education and community-based programs, is less costly and more effective than detention and incarceration. As I previously stated, sometimes detention is necessary. However, we need to distinguish between those cases involving crime against property and those involving violent offenders.

In conclusion, I ask you to help the juvenile justice system by providing the funds necessary to make it work, and the recognition that juvenile justice is distinctive. What is encouraging about juvenile work is that we still have a chance to influence. Children are malleable. With proper effort,

delinquency success stories abound.[6] However, the juvenile court must have the attention and support of the political community if it is to succeed.

Children need to feel that they can make a contribution to this world. They need meaningful, therapeutic work to restore their battered self-confidence; they frequently need special education and practical job skills as well. If they perceive no important role for themselves in the community, they will drift. Conversely, with warmth and structure, they will thrive. Ladies and gentlemen, let me reassure you: There is hope. I see it every day, glimmering beneath the tears of our children. Thank you.

---

[6]For example, the case of Adrian M., provided to me recently by Master James Casey, of my court. In 1977, Adrian M. had 17 complaints filed against him, including assault with a deadly weapon and armed robbery. He has made full restitution for his delinquent acts, and now works and supports his family.

Mr. SCHUMER. I want to thank all four witnesses, each for compelling testimony, each with a different perspective.

Let me start by saying that I guess one of the questions that we face as legislators is who are the preponderants here? Are the preponderants the Jay Perezes or are the preponderants the Antoines? We can each point to single cases here and there, but the question is what are most of these kids like?

There is a benefit to safety, which we all know and is apparent; and there is also a benefit in having an Antoine become a productive citizen again and not a criminal locked up. Where is the balance? So I guess I would first ask Mr. Reinharz and Ms. Wallace and maybe even Mr. Murphy and Judge Mitchell, are there more Antoines or are there more Jay Perezes in the kids you see go through the juvenile justice system?

Mr. REINHARZ. First of all, I would like to introduce Larry Sleivy; he is with the executive department of the law department, and he is here with us today.

Mr. SCHUMER. Welcome, Larry.

Mr. REINHARZ. I don't know if there are more Antoines, defendants or more victims.

Mr. SCHUMER. No, no, no. Forget that I asked about Mrs. Ruiz. Are there more Antoines or more Mr. Perezes?

Mr. REINHARZ. It is clear to me that the bulk of the crime that is committed, at least according to the numbers that I see, is petty crime; and that is at least the case in New York City. In New York City, however, we have to make a choice, because resources are scarce. The cases that are referred——

Mr. SCHUMER. I am not talking about petty crimes. I am trying to be too artful here. We have an Antoine; Antoine had a serious record of crime, mainly gun crimes. He was sent to a juvenile facility. He is now a productive citizen after only a year or two.

I suppose if you asked the average person on the street, they would say that the Antoines are few and far between, that most people you put them in these rehabilitation facilities, most people in Antoine's condition would come out a year or two later and they would commit another crime again, and that is what drives society crazy.

The question to you is—and I am going to ask each of the panelists—if we didn't change the juvenile justice system, and we treated each person; not any treatment, because a lot of these kids just fall through the cracks and get nothing at all—but if we treated each kid as we treated Antoine, would most of them end up leading productive lives?

Let's take someone who is a fairly serious criminal. It is not the first time, and it is not a low-level crime, but they have committed a series of crimes. They haven't blown anyone's head off, thank God, but they have walked around with guns and God knows what they have been doing with the guns, et cetera.

Mr. REINHARZ. The State comptroller of New York about a year ago did a study on recidivism regarding the New York City——

Mr. SCHUMER. These are kids who were treated?

Mr. REINHARZ. Kids that went to youth facilities, kids that are in the division for youth facilities. The recidivism rate at the fiscal

year was noted by the comptroller to be 86 percent. I suppose you could say that that would translate to a 14-percent success rate.

Mr. SCHUMER. Right.

Mr. REINHARZ. What that tells me is that the number of Antoines is rather small compared to the numbers of Jay Perezes, who is, by the way, a recidivist.

Mr. SCHUMER. I understand. Society would not tolerate turning 10 people out and having 1 or 2 become productive citizens and wouldn't want to tolerate, although we may tolerate it right now, 8 committing more crimes.

Ms. Wallace, you probably have a rebuttal to that.

Ms. WALLACE. Certainly I do. I am going to say that my experience leads me to believe that there are more Antoines.

Mr. SCHUMER. Would you say half the people are Antoines?

Ms. WALLACE. I would say more than that. I can say to you that I have had enough conversations with enough children who have looked me in the eye and talked to me about things that were going on with them to believe that there—to know that there are more Antoines. Most of our clients, most of our children, they want an education, they want jobs, they want to go to school, they want to learn; and they don't want to carry guns, they don't want to——

Mr. SCHUMER. Why do they?

Ms. WALLACE. Many of them, because they feel that that is the only thing they can do to protect themselves.

Mr. SCHUMER. Well, but somebody who goes into a store and robs somebody isn't protecting themselves with that gun.

Ms. WALLACE. I am not saying that every single child carries a gun to protect themselves, but I will tell you this, that recently the Judicial Conference for the D.C. court was held, and we had at the conference both kids who testified in person and children from the facilities, who testified anonymously. And what they said, what they all said was really amazing.

They don't want to carry guns. They wish the guns were gone. They wish we would get rid of them. And I believe, in response to your question, that that sentiment is shared by most of our clients, most of our children. They are waiting for us to show them another way; they are waiting for us to make them safe.

Mr. SCHUMER. What was Antoine's crime? Was it just carrying a gun?

Ms. WALLACE. It was possession.

Mr. SCHUMER. Did Antoine, as far as you know, commit any crimes with the gun?

Ms. WALLACE. Sure. He had an assault with a dangerous weapon offense.

Mr. SCHUMER. OK. He wasn't protecting himself with that gun, was he?

Ms. WALLACE. I don't really know the underlying facts, but he may well have been.

Mr. SCHUMER. Let's assume he wasn't. I think that is a reasonable assumption. Not always, but reasonable.

Mr. SCHIFF. Mr. Chairman, would you yield on that?

Mr. SCHUMER. Well, I just want to draw this to a head here. I believe, as you do, Ms. Wallace, that we should try for rehabilitation when we can. But I cannot see the logic, if there is an 86-per-

cent recidivism rate, and even Antoine has committed a serious crime, in saying that because there is one Antoine and eight or nine non-Antoines who are going to commit other crimes and aren't rehabilitated, we shouldn't have stiffer punishment.

Explain to me how you deal with these statistics which frankly are in Mr. Reinharz' favor in the sense that we see the vast majority of juveniles who go through the system commit new crimes.

Ms. WALLACE. The way you deal with the statistics is to put more resources into the juvenile justice system and into treatment, because that is not happening. It is one thing to say—to quote a figure to say that this percentage of children are coming back, but you have to look at have they ever received treatment that the system promised them in the first place? The answer—I can only speak for D.C., of course, but I can answer unequivocally that the answer is no.

So what we need——

Mr. SCHUMER. Right. Understood. We want to do more treatment. I want to do more treatment. The crime bill shows, I think, that this entire committee has put our money where our mouth is. Both Judge Mitchell and Mr. Murphy have said—Mr. Murphy said it explicitly; I think Judge Mitchell implied it, that a year or two of treatment for someone 14 or 15 who has had such a horrible prior experience in most cases isn't going to do the job. What do you say to that?

Somebody who was been beaten by their daddy, when they were 2 may not be a criminal, but he is going to have a very difficult time. He does haven't to rob for money or anything like that.

But what do we say—he may become a criminal—Mr. Murphy?

Mr. MURPHY. Or a politician.

Mr. SCHUMER. A politician, yes. Thank you, Mr. Murphy. That was a constructive—I remind you that when the Michigan survey research asked the mothers and fathers of America what they wanted their kids to become, the one at the bottom was used car salesman. But vying for next to the bottom were politician and lawyer.

Ms. Wallace, it is a serious question. A society that just says, build prisons and ignore these people, without attempting to rehabilitate them understandably makes people angry. But what can also make people angry is a society that says let's try to rehabilitate, but let's not punish, let's not keep people off the streets, let's not set a moral tone, if for whatever reason these kids are committing crime after crime after crime.

How do you deal with that issue?

Ms. WALLACE. I am not suggesting that there aren't some young people who need to be off the streets, who need to be in a program that is going to provide——

Mr. SCHUMER. Young people with whom our society doesn't deal with now, who our society doesn't keep off the streets now, isn't that correct?

Ms. WALLACE. No, no, that is certainly not true in D.C., if you look at the figures for children.

Mr. SCHUMER. No, no, no. But we have had this argument. I don't care if it is 5 percent or 10 percent; if the number of people committing crimes is 20 percent, and only 10 percent are in jail or

in some kind of facility, then our Government is not doing one of its major functions, which is providing safety.

So the number of people has nothing to do with it. It has to do with where we go as a society, it has to do with the need for rehabilitation, it has to do with the problem that a society that imprisons 5 or 10 percent of its people is not going to be a productive, good society, and we ought to change that.

But in terms of safety, what we are saying here is that it is not doing its job, and that safety is also a goal.

Ms. WALLACE. I agree with you that we are not doing our job in terms of safety. I disagree with you as to why. The reason why our jobs aren't being done as to safety is because we are not providing comprehensive treatment, starting early, that is appropriate and continues through to an appropriate age.

Mr. SCHUMER. Let me ask you another question, and I will ask the whole panel.

Do you believe—Mr. Reinharz mentioned that a 15-year-old in New York who was carrying a gun is not fingerprinted or identified, so, when arrested, no one knows who that person is if he or she does it again.

Do you agree with that, they shouldn't be fingerprinted or identified? Whether it is for rehabilitative purposes or for incarceration purposes, shouldn't we know the person who does it time and time again?

Ms. WALLACE. I believe that the confidentiality laws that prevail in the juvenile system are correct, because if you have a system based on treatment and you say to a child, OK, if you get out of this system and you do—you join society and you don't commit anymore crimes, you don't get into trouble, we are going to give you a fresh start.

Mr. SCHUMER. You do this from 13 to 17; if they have committed 20 crimes, would you still keep it confidential?

Ms. WALLACE. The point is, whenever they get out, if they get out and they do not engage in any more delinquent behavior for a certain period of time, we have promised them a fresh start, and they should get that fresh start.

Mr. SCHUMER. That is a different issue. Right now, after they commit that crime and we don't know if they are going to go on a fresh start, their names and fingerprints are not available to anybody else.

Ms. WALLACE. Well, that is not true in the District of Columbia.

Mr. SCHUMER. OK. Should it be true everywhere, that records should be made available to the prosecutor, to the judge, and to the other law enforcement official?

Ms. WALLACE. Well, in D.C., there are limitations or exclusions to the confidentiality rule to allow judges to have information that they need about juveniles' prior records.

Mr. SCHUMER. Let me ask you one more question, Ms. Wallace, and then I want to move to Mr. Murphy and Judge Mitchell.

A 17-year-old male takes a gun and rapes a woman and it is the second time he has done it. Should that person be treated in the adult court?

Ms. WALLACE. No.

Mr. SCHUMER. OK. We have a wide division of opinion here.

Ms. WALLACE. Well, I just want to, in completing that answer——

Mr. SCHUMER. Well, let me ask you this, should that person, if not treated in the adult court, should that person get as long a sentence as a 20-year-old who did the same thing?

Ms. WALLACE. Well, in fact, I would have to—should they get as long of a sentence?

Mr. SCHUMER. As long a sentence.

Ms. WALLACE. No. They should be treated in the system because that is where the evidence is. That is what works.

What we are trying to do is safeguard——

Mr. SCHUMER. You haven't given statistics, you have told us about Antoine. You said you have seen a number of Antoines. That is not going to be enough for us to go on.

Ms. WALLACE. Well, but the contrary statistics are that in D.C., we have—if someone in D.C. who is 16 years old commits a murder, they are locked up for 30 years, automatically.

Mr. SCHUMER. Well, what society is saying there is that we are so worried about these people being recidivists, for whatever reason, that society is making a judgment that the people on the outside who didn't commit a crime are more important than the rehabilitation of the person on the inside. Let me just finish. That is not an unfair judgment.

I would try to work against that judgment and try to say, we can do both: We can punish and get the people off the streets and focus more on rehabilitation. But I have to tell you that a view that someone who commits such a serious crime as I outlined to you and shouldn't be treated to very serious sentencing stands in my way of getting that done.

Ms. WALLACE. They should be——

Mr. SCHUMER. I will let you have the last word. I am sorry.

Ms. WALLACE. Thank you. I agree with you that there should be a response, and I didn't mean to suggest with the story of Antoine that treatment ends in 1 or 2 years. In fact, Antoine is probably still in the system on aftercare. But what I do know that the figures show is that simply locking people up for long periods of time does not deter crime, and the District of Columbia is a prime example.

Mr. SCHUMER. We know that. They will not, however, while they are locked up, commit another crime. You agree with that; that is obvious. OK.

I would like to ask Mr. Murphy's and Judge Mitchell's opinions on the issue of a 15-year-old carrying a gun in terms of fingerprinting and identification.

Mr. MURPHY. Having spent 26 years in the juvenile justice system, as I said, in all different capacities, I think the laws of confidentiality should be set aside. I don't believe in them in any way, shape or form. I think they harm the system. I think that they protect incompetence from the system; I think they keep from the public an awareness of what goes on in the system.

Recently, in Illinois, the Child Fatality Task Force, which was mentioned here, I think, by Mr. Wilson—that is where if a kid who is abused and neglected dies within the system, he is killed by a foster parent—you get together and you study the reasons why.

The law was passed saying that the public had no right to find out why, the results of a child fatality task force.

When we take a 2-year-old kid away from a parent because he is abused, we put him with a foster parent and he is killed, and we don't know why he was killed, how or anything else, it is absurd. I think the way to improve any system of government that can hide behind a wall of confidentiality is going to be incompetent.

Mr. SCHUMER. What about the argument Ms. Wallace makes that it will damage the person who committed this crime and permanently put the mark of Cain on his or her forehead.

Mr. MURPHY. You know, these kids are so much more advanced today than they were 25 years ago. They can run circles around everybody at this table, the kids I see in the Chicago court; and that is the crime of it, that the 12-year-old kid has more sophistication than we do.

Me, I grew up in the streets——

Mr. SCHUMER. You are a child advocate?

Mr. MURPHY. Yes. I represented murderers, adults and juveniles, and I see them today and there is no comparison. What we have created is a monster out there.

Mr. SCHUMER. I have found from my job on the Banking Committee it works the same way. We have secrecy in which banks are sick, and it allows many more bad banks to continue to be bad banks. I want to abolish it there, and I want to abolish the secrecy here.

Mr. MURPHY. It will make us in the system work harder and do a better job. We can get away with literally murder because we know there is no one looking over our shoulders.

Mr. SCHUMER. Judge Mitchell.

Judge MITCHELL. To answer your question, sir, fingerprints should be stored by the police and used for identification purposes, and they then should be subject to judicial approval for the release of that information.

Mr. SCHUMER. What should be the criteria for judicial approval?

Judge MITCHELL. The—you have certain criteria that would automatically exclude the referral of that matter to a court for approval of release of information. If it is needed for purposes of identification, for comparison for crimes that are under investigation, I think that clearly should get consideration as a new requirement for judicial intervention. If it is for other purposes, I think that this should be applied to the court and the court should evaluate that and use its appropriate discretion in whether to release that information.

The nature of the standard I haven't thought about.

Mr. SCHUMER. Let me ask you this one.

Just off the top of your head, because I was impressed with your testimony and I want to hear what you have to say, let's say we have a 15-year-old and he has committed one or two other low-level property crimes in the past. Then, he is arrested for carrying a gun—but hasn't used the gun in anything.

If you were the judge in your system, would you allow that to be made public? If not, why not.

Judge MITCHELL. If you are asking a question about the confidentiality of juvenile proceedings——

Mr. SCHUMER. You mentioned they should apply to a judge to allow the records to be made public, so now they have applied in this particular case and obviously you don't have that many details. What would you say?

Judge MITCHELL. If it is not for identification purposes or if it is not related to a criminal investigation, the answer would be no.

Mr. SCHUMER. OK. Does this mean that when the police arrest the kid again, they would not know that there was a prior arrest?

Judge MITCHELL. No, that would not mean that, because again it is for identification purposes.

One of the instances that we——

Mr. SCHUMER. Well, they have other means of identifying kids.

Judge MITCHELL. Not always, sir.

Mr. SCHUMER. Let's say they did in this case.

Judge MITCHELL. Still, if they wished to use it for identification purposes, I would allow it.

Mr. SCHUMER. Would you allow it for purposes other than identification purposes, you would not even allow the arresting officer or others?

Judge MITCHELL. They would have no reason for it, other than voyeurism.

Mr. SCHUMER. Wouldn't determining how to deal with that kid early on in the process be a reason?

Judge MITCHELL. No.

Mr. SCHUMER. Or whether to follow the juvenile and see what is going on in his neighborhood?

Judge MITCHELL. No.

Mr. MURPHY. Go I——

Mr. SCHUMER. Go ahead, Mr. Murphy.

Mr. MURPHY. We are like Plato's man chained to the cave wall. We are just seeing the images on the wall. So we see the 2 or 3 percent that come in, or the less or more into the system, and we concentrate on it, whether it be a victim or it be an offender; and we say, listen, if we could help this kid, he wouldn't be here. We don't realize that 95 percent of even the so-called underclass behind him are not coming into the system, they are doing a hell of a job under the most bleak circumstances possible of raising their kids and not getting involved in criminal activity.

On the other hand, these 95 percent are affected by juvenile delinquency as much as the victims that you bring to court, because when I represent these kids, they are afraid to go to school, because the gangs control the school. And what my colleague next to me here pointed out is true. Most kids carry weapons as defensive means. But if we were really hardnosed with respect to getting weapons off the street, to prosecuting everybody who carried a gun—draconially, if necessary—then perhaps the message would get across, you don't carry guns, kids would feel safe to go to school.

Who is hurt most by these thugs that come to court, the Antoines of the world? It is 95 percent of the kids that we never see.

Mr. SCHUMER. Let me give you an example, Mr. Murphy. A kid has no record at all, has not been arrested and has not been previously involved with the law, carries a gun for defensive purposes, and unlike Antoine, didn't use the gun to hold up or shoot some-

body, and in fact, has not even brandished the gun. If we were to arrest that kid, no one is saying he should be put in the adult system.

Mr. MURPHY. No, of course not.

Mr. SCHUMER. But if we are to arrest that kid and put him through the juvenile system and make the records public, what I believe Ms. Wallace and Judge Mitchell are saying is, the kid would say, hey, my life is over, I don't have much of a chance, I am branded a criminal, and this would lead the kid to commit further and more serious crimes.

Mr. MURPHY. I disagree. First of all, I don't think their lives are over, and it is not like it is going to be a front-page story in the New York Times tomorrow because some kid who is 14 has a gun. You have to get the message out to the 95 percent of the kids who their moms won't let them go out after dark.

We had a case in Chicago where a kid was an outstanding kid raised by a single mom, going to parochial high school that she sacrificed in order to get him into, and she wouldn't let him go out after 7 o'clock; and on Halloween he begged her to go to a Halloween party. And, of course, he was murdered by a gang-banger on his way there because he wasn't a gang-banger. And people in the inner city, they lock themselves up at night because they are afraid——

Mr. SCHUMER. I spend a lot of time talking to inner-city people. They are tougher on crime than lots of other people.

Mr. MURPHY. How are you going to get these kids to want to go to school? I think the message has got to get across that we are going to protect you.

Mr. SCHUMER. Mr. Reinharz, go ahead. I see you have been chomping at the bit there.

Mr. REINHARZ. I take issue with the theory that many of the kids—at least from a prosecutor's standpoint, that many of the kids carry guns for the purposes of protection or self-preservation. I believe that that is what they tell us, because that is exactly what they tell us. But we have the advantage in the juvenile justice system of seeing the presentence investigations in every single one of the cases, because at least in New York it is mandated. And I will tell you that every kid—and there are thousands that I have seen over the years—that has had a gun, that has possessed a gun has what you would call a predatory nature. I am not saying that there aren't kids that have carried certain weapons, screwdrivers and things like that, for the purpose of their own protection. But getting a gun is an expensive proposition for a high school or junior high school kid. They certainly have to go to a fair amount of trouble to get it, but they can get it.

Mr. SCHUMER. It is not that hard these days.

Mr. REINHARZ. It is easy enough on the street, but the thing is the expense is there, so they have to come up with the money. And certainly when they come up with that kind of money, I believe that there is a purpose in mind.

I believe that the confidentiality laws which prohibit me from getting photographs of these people actually inhibit me from finding out, you know, how they are getting money, possibly by doing armed robberies. So more often than not, I find that the confiden-

tiality laws that are associated with this juvenile justice system and the gun cases often work more as a sword in the system rather than as a shield.

Mr. SCHUMER. Right.

Go ahead, Ms. Wallace. Although you can answer my question as well as his. Someone who did something wrong does deserve some kind of societal disapprobation and some kind of punishment. We want to rehabilitate, but we can't erase the wrong committed. They did it.

You don't agree with that, I know.

Ms. WALLACE. That is not true.

Mr. SCHUMER. You don't even want to reveal a juvenile name because he might be hurt despite the fact that he broke a criminal law.

Ms. WALLACE. I think the statute in D.C. strikes the appropriate balance. It provides information to judges, to prosecutors, to people in law enforcement who need them, but still protects the confidentiality of the child from the general public. I have to disagree, based on experience, that we are not going to find the kids' names splattered all over the paper. In fact, I can speak from experience about clients who that has happened to, and——

Mr. SCHUMER. But look, I read the newspapers every day and I see the numbers of crimes. The number of kids whose names get into the paper compared to the number of crimes committed is minuscule.

Ms. WALLACE. Well, because there are confidentiality laws. But if there weren't—if there weren't, I believe that that would be vastly different. Most of the media respect those confidentiality laws and therefore don't broadcast the names. So, again, I think there is a balance that is struck in terms of that.

Mr. SCHUMER. Judge Mitchell, you look like you wanted to say something, too.

Judge MITCHELL. I ask anyone who is involved in this, particularly holding a position of some level of responsibility, to maintain a perspective on this whole process; and let's not engage in sensationalized statements and comments. I mean, it is very difficult, sir. It is very difficult to sit here and to proceed in this process.

There are Members of Congress, members of the Federal and State judiciary, members of law enforcement, members of the general public, members of the media, and members of—just ordinary folks who have done stupid things in their life when they were kids.

Mr. SCHUMER. That is true.

Judge MITCHELL. I am the first to say it. I was one of them. I did stupid things in my life when I was a kid. Now, to have that all splashed before the public just because we think we are going to use Black's Law Dictionary to kill a flee is ridiculous. Perspective, please.

Mr. SCHUMER. Mr. Reinharz says that he needs this information to help prosecute the kids.

Judge MITCHELL. Sir, an advocacy position, perhaps I am speaking from the perspective as a judge where we are free to balance and consider all sides of the question. I am not attacking that aspect of an advocacy position. I am asking for some balance by those

who have to make the decision. That is the legislatures and the executive, not in an advocacy position, as such.

Mr. SCHUMER. Judge Mitchell, let me tell you something. I think this committee has a reputation of being pretty down the middle on these issues.

Judge MITCHELL. I agree with you. I know it has.

Mr. SCHUMER. I would say one other thing. Somebody who commits a rather serious crime should at the very least, have their name made public and receive some measure of societal disapprobation. You may disagree with it.

Judge MITCHELL. I do.

Mr. SCHUMER. But I hardly think it is an unfair position to take, in all due deference. And I would say 98, 99 percent of the American public would probably agree with me. So you may feel this is wrong, but with all due respect, I have to disagree with you.

First, the only crimes that will get coverage at all are the worst and most gruesome crimes. I think the real problem is that too many crimes are committed and just treated as happenstance and as if there is nothing we can do about them—much the opposite, frankly, of what you have been saying.

I am genuinely angry about the societal attitude that we can't deal with crime, that everyone has to live afraid, and that people have to start hating each other, because there is nothing we can do. I believe some light works as a disinfectant, as Judge Brandeis said, in most walks of life.

Judge MITCHELL. I tend to agree. And I would suggest, sir, that most kids, most offenders who appear before the juvenile justice system do not recidivate. Unfortunately, it is a very hardcore group of those who do. And when we say that we should make all information about all people who appear before the court in a juvenile setting—publish knowledge, it concerns me.

Mr. SCHUMER. We didn't ask about that. I asked about a 15-year-old with a gun, which I think is probably a middle-type person you see, not the lowest and not the highest.

Mr. REINHARZ. Sir, time and again, I mean, I am told that disclosure is going to somehow stigmatize or wound some of the young people. But really just as a commonsense point of view, I really think we have to ask ourselves, we are talking about 13-, 14-, 15-year-olds in the juvenile justice system that are walking around with firearms. Shouldn't there be some sort of, if not stigma, but something to attach to tell them that it is wrong?

The problem in the juvenile justice system is that there isn't anything there to tell them what they are doing is wrong; and if it is a stigma to tell a 14-year-old that they shouldn't be walking around with a gun, then maybe we need a little more stigma.

Mr. SCHUMER. Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. I know we have another panel, so I will be brief.

Mr. Chairman, I thought your line of questions was excellent. I would just like to take 1 second to put my perspective of the panel's testimony.

First of all, I think it is an outstanding panel. I think we have had different views, but different views from different perspectives and all experienced and professional; and I have to say that at

least to some degree I agree with all of the speakers. Though I was a career prosecutor, I also defended on a contract for the public defender in my hometown of Albuquerque, so I have been on both sides. I believe there are elements of family interdiction, elements of treatment, and elements of incarceration that all fit in somewhere. We can debate about where the line is, but all of that has some meaning.

I would even say, unfortunately, I think it is even more complicated an issue than that, because we know there are people who do not come from the underclass, who have every privilege we can imagine growing up, and when they are grown up they commit real estate fraud, they bilk savings and loans, they defraud the Defense Department in contracts, they embezzle from their employers. I mean, they are criminals.

Now, we can't I suppose—and I hesitate to say it this way, but I suppose we can be a little thankful that they usually are not violent criminals, that the end results of their crimes are more monetary than death and injury and physical violence. But they aren't less criminals, and the point is that even taking, even addressing what has been impliedly and directly referred to as the underclass, doesn't address why those people would commit crimes.

I have to say, however, the concerns I have expressed previously are that I do believe there is a line over which we say to somebody, to punish you, you ought to go to prison; and the example we have been talking about, a 17-year-old who commits violent rape while armed with a firearm, to me, falls in that definition.

My concern is not that every offender less than that should go to prison; I don't believe that. But I think that for a senior Justice Department official to balk at the idea that someone that commits that kind of offense ought to go to prison, I think is nothing less than shocking because these are supposed to be the people that are leaders in law enforcement.

I think, further, the statistic given earlier that in the whole United States of America, exactly 125 juveniles are in Federal custody shows that we may be having a great discussion here, but the Federal Government is not a player in addressing this problem. So I hope in my taking a couple of minutes here I have just laid out where I am and saved in questions.

Before I am done, any panel member who wants to respond to that in any way is free to do so on my time. What I want to specifically talk about, however, is the issue of guns that has been mentioned over and over again, particularly by Ms. Wallace and Mr. Reinharz. I want to bring up the fact that they come from New York and the District of Columbia, which have, at least in my understanding, the toughest gun control laws on the books already. I would assume in both of your jurisdictions, it is illegal now for a 5-year-old to walk around with a firearm; is that correct? Would that generally violate your laws?

Mr. REINHARZ. Yes.

Ms. WALLACE. Yes.

Mr. SCHIFF. And I support the Youth Handgun Safety Act drafted by another Member that would basically make that a crime nationwide.

But let me ask Ms. Wallace, in the District of Columbia, whether you might agree or disagree with the approach, could you tell us—let us suppose the authorities here catch a 15- or 16- or 17-year-old in possession of a firearm illegally, under the laws of the District of Columbia. What do they do about it?

Ms. WALLACE. What do they do about it?

Mr. SCHIFF. Do they prosecute the case?

Ms. WALLACE. Oh, sure, absolutely. The case would be prosecuted and through the system as a comparable to the way that a criminal, adult criminal prosecution would take place.

What happens to the child? A lot of them are locked up. I don't have any numbers for you, but just the general statistics that I have quoted. But, yes, definitely, they are prosecuted.

The problem, though: It is true, we have strict gun control laws, but it is very easy to go—go not far to a ghetto, some place that doesn't have the same type of——

Mr. SCHUMER. If the gentleman would yield, 98 percent of the guns used in crimes in New York came from dealers outside of New York from States with lax gun laws.

Mr. SCHIFF. But the point is, they are still violating the law to get those guns, and I am really not raising gun control as an issue as far as legislation goes; I am raising when you have gun control on the books, do the authorities enforce it? Can you expect that if an individual is caught, illegally with a firearm, in the District of Columbia, that assuming enough evidence, that the authorities will actually prosecute the case?

Ms. WALLACE. Absolutely, in the District of Columbia.

Mr. SCHIFF. I am glad to hear that. If it is on the books, it ought to be enforced.

Ms. WALLACE. What I would suggest, though, that if where you are going—and that is, why isn't that working—one answer is that, as one young man explained, if I have to take—if I have a choice between getting locked up because I am going to carry a gun or being killed because I don't have a gun, which one do you think I am going to choose?

Mr. SCHIFF. Well, that is because others, even if that is true—and I tend to agree with Mr. Reinharz, the claim is made, I carry this gun for protection; I suspect it is made by those who are predatory. I think it may be a true claim, but I think it is a claim by those who are predatory when they get the opportunity to be predatory, I think.

Mr. Murphy, I gather, may not agree with that conclusion, but——

Ms. WALLACE. I think you have to look at the statistics. In D.C., I think you will find lots and lots of children locked up for gun charges with no other charges of use of the gun—I mean, a lot of gun charges just in and of themselves.

Mr. SCHIFF. But the point is, they are afraid of somebody else with a gun. I mean, even accepting that at face value, they are carrying these guns because they are afraid of somebody else who is illegally carrying a gun; is that right?

Ms. WALLACE. Right. I think someone said to me, it is no different than sort of international politics. You are afraid to get rid of your gun because the other person has a gun, and so it escalates.

Mr. SCHIFF. The authorities should be prosecuting everybody who has a gun, shouldn't they?

Ms. WALLACE. Our clients don't want guns to be available to anyone. They would be happy with that. And prosecuting alone is not going to solve the problem, in my view.

Mr. SCHIFF. Mr. Murphy.

Mr. MURPHY. Just the point that most kids who carry guns for defensive purposes are going to be blown away if they get involved with someone who carries it for offensive purposes, so first, it doesn't make any sense.

Second, a lot of kids who carry guns for defensive purposes—and I could point to any number of cases—they start showing it off to their friends and, bam, the gun goes off and someone is dead; it is an accident, but the kid has a gun.

My view after 30 years of seeing this stuff is, any kid, any adult with a gun should end up in the can. It is the only way to get the message across. It may be a day or two, if a kid—if a kid is 9 years old; and he doesn't go to the jail, he goes to the juvenile facility. But you have got to get the message out to these kids; they are blowing each other away.

We had 115 children killed by firearms in Chicago last year. The Tribune won a Pulitzer Prize for reporting on it. Some 95—I think virtually 100 percent came from the inner city. We are turning our backs on the people and the kids we are trying to protect. You have got to do something about it.

You can't just say, OK, we are going to give you a break, we are going to give you counseling. It doesn't work.

Mr. SCHIFF. Well, I would suggest—you might disagree, but from a stronger point of view, I suggested prosecuting. You——

Mr. MURPHY. You have got to get the message out to protect the innocent kids out there, the kids who are afraid to go to school, the mothers who are afraid to let their kids outside the door. You get the message across by saying anybody—obviously, if you are a gang-banger and you have got a record and you get caught, you are going to get a lot more time than if you are a 12-year-old kid carrying it to school because you think you are a big shot. That kid may get 2 weeks, a month, he should get a slap on the hands to say that if it happens the next time, it will be a year.

Mr. SCHIFF. Let me say on that, Mr. Murphy, by the way, I am born and raised in Cook County, so I have some familiarity with the area, but not for many years. Currently, today, in Illinois would it ordinarily be illegal for a 15- or 16-year-old to possess a firearm?

Mr. MURPHY. It is illegal to possess a firearm in Illinois, concealed weapon.

Mr. SCHIFF. A concealed weapon statute. OK.

What happens today in Cook County, in your experience, when, say, a 16-year-old is found illegally carrying a concealed weapon?

Mr. MURPHY. He would be prosecuted, and the first or second offense, he would get off on probation if he was just carrying a concealed weapon and nothing more.

Mr. SCHIFF. And you don't agree with that?

Mr. MURPHY. I think if we want to protect the children and adults, particularly in the inner city, we are going to have to—anywhere, gun use is—if there is any crime, you know, if we can get

rid of the guns, if we can let the message out that anyone who is carrying a gun is going to end up in jail, you are going to be involved in more violent crimes.

You know, you can't again kill someone in a drive-by by throwing a rock or a knife at them, but you can kill a lot of people by blasting away, and most of them are going to be innocent.

Mr. SCHUMER. We need a huge increase in prosecutorial and prison capacity to do that. I am not opposing it; I just want to point out the problem.

Mr. MURPHY. If you are carrying a gun, if you use a gun in a crime, whether you are a juvenile or an adult, I would give substantial sentences. We have to protect——

Mr. SCHIFF. Ms. Wallace, your opinion on that?

Ms. WALLACE. I just want to say that that is basically what happens in D.C., and it is not working. So the answer lies somewhere else.

Mr. SCHUMER. What is the average sentence for someone who is arrested for possession of a firearm in D.C.? How much time do they spend in prison, juvenile?

Ms. WALLACE. Juveniles, the sentence for juveniles is the same, regardless of the offense. They can be incarcerated or committed to the Department of Human Services until they are 21, regardless of whatever age that they come into the system.

Mr. SCHUMER. What is the average amount of time served?

Ms. WALLACE. I really don't know.

Mr. SCHUMER. My guess is, it is very little. I don't know a single urban jurisdiction where these crimes are treated with anything more than, generally, probation for a first-time offense.

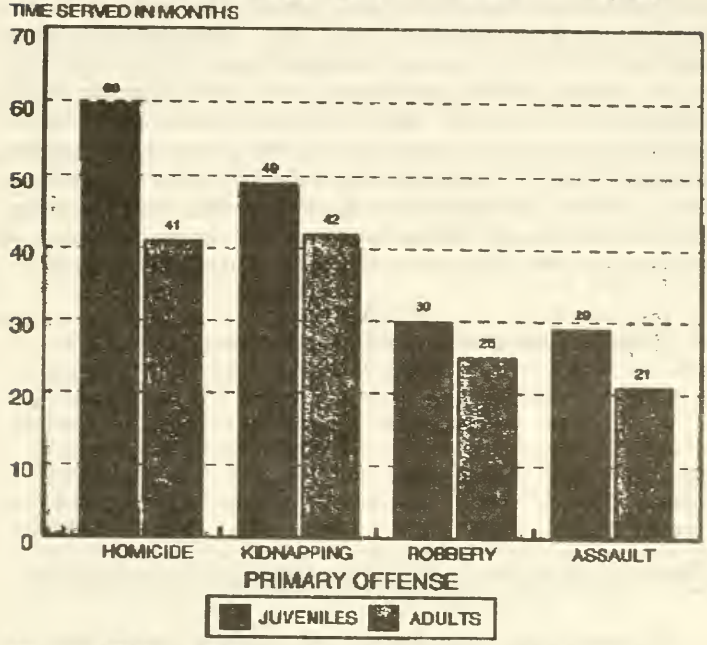
Ms. WALLACE. Well, actually, the statistics that I have seen suggest that in fact when youngsters are treated in the juvenile system that they often spend much more time incarcerated, either detained or after, than if they are prosecuted for the same offense in the adult court.

Mr. SCHUMER. Anyway, if you can get some statistics for us on that, the record would stay open for 5 days. You don't have to, but I would like to see them.

Ms. WALLACE. I would be happy to.

[The information follows:]

FIGURE 11
LENGTH OF INCARCERATION FOR RELEASES FROM THE CALIFORNIA YOUTH AUTHORITY AND CALIFORNIA DEPARTMENT OF CORRECTIONS, 1992



Source: California Department of the Youth Authority; California Department of Corrections.

In a study comparing the severity and effectiveness of juvenile and adult criminal court sanctions for 16- to 17-year-olds accused of burglary and robbery in New York and New Jersey, researchers found that dispositions were no less severe in juvenile court compared to adult court. In addition, over time, youth sanctioned in the juvenile court were rearrested less often, at a lower rate and after a longer crime-free period.[20]

The severity of juvenile court intervention is even clearer if we

20. J. Fagan, M. Schiff, E. Bribben and D. Orden, The Comparative Impacts of Juvenile and Criminal Court Sanctions on Adolescent Felony Offenders (Washington, D.C.: National Institute of Justice, U.S. Department of Justice, 1991).

examine the composition of the nation's juvenile correctional facilities. Juvenile court statistics reveal that a growing portion of delinquency referrals are handled via formal delinquency petition filings, increased use of pretrial detention, reduced use of probation and increased out-of-home placements and transfers to adult court. Not surprisingly, these trends have led to record levels of incarcerated youth in the nation's jails, prisons, detention facilities and training schools without any discernible impact on violent crime rates. Table 3 shows that juvenile custody rates in public and private juvenile correctional facilities increased by 47 percent between 1979 and 1991. Data also suggest that the number of juveniles in the nation's adult jails has remained relatively constant while the number of juveniles held in adult prisons has increased.[21] Increased numbers of youth in secure institutions, however, has not reduced juvenile crime.

TABLE 3
JUVENILES IN CUSTODY PER 100,000 OF ALL U.S. YOUTH
1979-1991*

	1979	1983	1985	1987	1989	1991	PERCENT CHANGE 1979-1991
U.S. Total	251	290	313	353	367	370	+47%
Public	151	176	185	208	219	220	+46%
Private	100	114	128	145	147	150	+50%

* Rates are computed for juveniles aged 10 to the upper age of juvenile court jurisdiction in each state.
Source: Children in Custody Program, 1979-1991. U.S. Bureau of Census, Population Estimates.

Recent analyses indicate that the vast majority of juvenile offenders currently housed in correctional institutions have been committed for nonviolent offenses. An analysis of youthful inmates in 28 state juvenile corrections systems revealed that less than 14 percent of the juveniles committed to these systems (6,835 of 50,260 beds) were committed for the most serious violent crimes. Over half of the juvenile population in these institutions had been committed for property and drug crimes and were experiencing their first confinement to a state institution (Figure 12).[22]

21. R. DeComo, S. Tunis, B. Krisberg and N. Herrera, Juveniles Taken into Custody Research Program: FY1992 Annual Report (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 1993).
22. Ibid.

Mr. SCHIFF. Let me just come over to Mr. Reinharz. Are you in New York City?

Mr. REINHARZ. Yes, I am.

Mr. SCHIFF. Could you tell me, in New York City, suppose that a 16-year-old again—same scenario, 16-year-old is illegally carrying a firearm, what happens?

Mr. REINHARZ. Well, a 16-year-old would be an adult. A 15-year-old would be a juvenile.

Mr. SCHIFF. Well, what happens to the adults, if you are familiar?

Mr. REINHARZ. Probably less than what happens to the juveniles. The interesting thing, in the last 2 years we have noted that on the juvenile side, it is more likely that you will be incarcerated for possession of a weapon, not for a terribly long period of time, but even for first offenders.

My office takes the position that a 14-year-old just basically as a privilege of his adolescence really doesn't understand the concept of mortality, and somebody walking around with a firearm that doesn't understand the concept of mortality is the most dangerous person in the city. We ask for a remand, we usually get a remand, and we usually get, with a kid, incarceration.

Mr. SCHUMER. For how long?

Mr. REINHARZ. The period of time is brief, but the average period of time for a placement on a felony in New York for a juvenile is 10 months.

Mr. SCHUMER. For a first-time gun felony?

Mr. REINHARZ. For any felony. I haven't broken it down for guns. But I would assume that guns fit in there as well.

Mr. SCHUMER. All right.

Mr. SCHIFF. But generally, to the extent you are familiar, what happens if adults violate the firearms laws of New York?

Mr. REINHARZ. Well, in New York there is a—something called the Sullivan Law, which requires 1-year mandatory jail time for possession of a gun. If there are special circumstances, you can be opted out of that jail requirement.

Mr. SCHIFF. All right. Is it routinely enforced, those are prosecutions that are brought under the Sullivan Act?

Mr. REINHARZ. Well, the prosecutions are brought under that particular law. The sentencing is not as broad as it ought to be.

Mr. SCHIFF. How about the local U.S. attorney? If the U.S. attorney for the Southern District of New York, which is New York City, has brought cases of violations of Federal firearms laws, does the U.S. attorney always take those cases?

Mr. REINHARZ. I really don't know what the U.S. attorney in the southern or eastern district is doing now with respect to that.

Mr. SCHIFF. That is fair enough.

Well, let me say, Mr. Chairman, my overriding view is that where gun control laws are on the books, they have to be enforced and, I think, enforced stringently. We could debate what "stringently" is. But you know, I think we have to be concerned—if we are going to express our concern for the people in certain areas who want opportunity, who want to get an education, who want to get a job, we have to be concerned about their safety. That is who is usually being victimized here. And I think that means, first off,

saying that anyone who illegally possesses a weapon is going to be punished; and I think that includes those who happen to be under 18 years old. Because they can pull a trigger as well as anyone else can.

I yield back, Mr. Chairman. Thank you.

Mr. SCHUMER. Thank you, Mr. Schiff.

Mr. SCHIFF. Could I add just one word, Mr. Chairman? I want to offer an expression of apology to the next panel. But I have a meeting of the Ethics Committee, which I am on, shortly; and since that involves——

Mr. SCHUMER. Another confidential procedure.

Mr. SCHIFF. Another confidential procedure, I am afraid, but that is a matter that I have to attend. So I will not be here for the third panel, but of course, I will get a copy of the final record on this.

Thank you, Mr. Chairman.

Mr. SCHUMER. Thank you, Mr. Schiff.

Mr. Mazzoli.

Mr. MAZZOLI. No questions.

Mr. SCHUMER. I want to thank the panel. I think it shows the diversity of the opinions, and I think we have a lot of work cut out for us. I would now ask panel III to come up. But, first, we are going to take a 2-second recess, and I will be right back.

[Recess.]

Mr. SCHUMER. OK. Our hearing reconvenes, and our third panel consists of people who have had a history of experience researching and working on issues involving the juvenile justice system.

First, we will hear from Dr. Terence Thornberry, professor at the School of Criminal Justice, of the State University at Albany, who has spent many years examining the causes of delinquency.

Second, Dr. Barry Krisberg, the president of the National Council on Crime and Delinquency, will testify. Dr. Krisberg has examined many effective ways to curb youth violence.

Third, we will hear from Mr. Edward Loughran. Mr. Loughran is currently the director of the juvenile justice program for the Robert F. Kennedy Memorial. Prior to that, he served as commissioner of the Massachusetts Department for Youth Services. Massachusetts has reformed its approach to juvenile crime and now has one of the lowest recidivism rates for juvenile crime.

We are going to ask, gentlemen, that you keep to the same rule that we had for the previous panel, so try to give us your best shot within the 5-minute limit. Your entire statements, without objection, will be read into the record.

Dr. Thornberry, you are first.

STATEMENT OF DR. TERENCE P. THORNBERRY, PROFESSOR, SCHOOL OF CRIMINAL JUSTICE, AND DIRECTOR, ROCHESTER YOUTH DEVELOPMENT STUDY, THE UNIVERSITY AT ALBANY

Dr. THORNBERRY. Thank you, Mr. Chairman, members of the committee. I am honored to be able to testify today on the important problem of the treatment of juveniles in the criminal justice system. My remarks will focus on risk and protective factors associated with serious delinquency and some policy implications that flow from that discussion.

During the past quarter century, we have learned that serious delinquency is typically initiated during the early adolescent years and that the onset of this behavior after the early twenties is relatively rare.

While many youths initiate delinquency during adolescence, there is growing evidence that involvement in delinquency and violence follows the life-course trajectory that has precursor behaviors beginning as early as 3 or 4 years of age.

Longitudinal research has also demonstrated that serious delinquency is highly concentrated among a small proportion of all youth. These chronic offenders constitute only 5 percent of the population, but commit between 50 and 75 percent of the offenses. Given their contribution to the overall rate of crime, successful intervention programs must include strategies for responding to this group and the wide range of problem behaviors in their lifestyles.

Research has also identified risk factors associated with delinquency. My written testimony lists many of them, and I will highlight only a few here this morning. Among these factors, poor parental monitoring and supervision. For example, not knowing where children are or who they are with are particularly important.

Among educational factors, low commitment to school and poor success in school are important, as is lack of attachment to teachers.

Perhaps most important are peer factors. Associations with delinquent and drug using peers, membership in juvenile street gangs, and lack of access to or rejection by their social peers greatly increases the risk of involvement in delinquency.

In addition to individual-level risk factors, research highlights the role that the structure of inner-city, poor communities can have on the risk for delinquency; and the neighborhood's access to safety, health care, educational opportunities and jobs and so forth is often simply unavailable. The frustration and alienation that this level of inequality engenders cannot be ignored in efforts to reduce delinquency.

Overall, there is clearly no single pathway or cause that leads to youth crime. Factors from many different psychological and social areas are involved in producing this outcome. It is also the case that exposure to multiple risk factors has a particularly strong influence on behavior. Data from the Rochester Youth Development Study, a longitudinal study of delinquency that I have been directing, can illustrate this point.

We identified nine family-based risk factors for delinquency and identified youths who experienced five or more of those risk factors as being particularly high-risk. In fact, those high-risk youth experienced three times as much delinquency as the low-risk comparison group. But not all high-risk youths succumb to these risk factors and actually engage in delinquency. Many high-risk youth are buffered or protected and manage to avoid involvement in delinquency. Our study also identified 13 factors that protected high-risk youth from this risk.

While individually each of these protective factors had only a small impact on reducing delinquency, collectively the presence of

multiple protective factors had a rather sizable impact. Of the high-risk youth, 80 percent of those who had fewer than six of these protective factors reported involvement in serious delinquency. On the other hand, only 25 percent of those who had nine or more of these protective factors reported involvement in serious delinquency. That is a rather striking statistic since we are only dealing with high-risk youth. Even in light of this level of risk, 75 percent of them avoided serious delinquency if they had multiple protective factors in place.

Although those protective factors reduced delinquency in the short term, it did not appear to have a long-term effect—2 or 3 years after the protective factors were measured, delinquency returned to rather high levels. These results have a number of important policy implications for prevention and intervention.

First, intervention programs should clearly begin early in the life course. The evidence is clear that for many delinquents, delinquency begins at relatively young ages. It is also evident that once delinquency becomes a part of a person's behavioral repertoire, it is extremely hard to eradicate. Because of that, intervention programs need to begin as early in the life course as possible. Waiting until the late teenage years when delinquency is well established is likely to offer too little too late. While programs for older offenders need to be available to help protect youth and society, they are unlikely to have a major impact on reducing delinquency.

Second, intervention programs need to be developed and implemented for the long term, covering the major portion of the life course. For many offenders, delinquent behavior begins early and is episodically exhibited. It is unlikely that short-term treatments lasting 6 or 12 months will be effective at combating delinquency. A more realistic goal for some offenders may be extended support of socializing treatment rather than seeking permanent cure and conventional short-term treatment projects.

Third, intervention programs need to be comprehensive, precisely because of the multiple risk factors and multiple problem behaviors that are exhibited.

And finally our intervention programs should be built around the increasingly precise knowledge that longitudinal research has generated about developmental pathways and risk factors. Indeed, only interventions that are firmly grounded with the core of etiology of delinquency should be encouraged.

Thank you.

Mr. SCHUMER. Thank you, Dr. Thornberry.

[The prepared statement of Dr. Thornberry follows:]

Testimony of

Terence P. Thornberry

Professor, School of Criminal Justice
Director, Rochester Youth Development Study

The University at Albany

Before the

Subcommittee on Crime and Criminal Justice

Committee on the Judiciary

U.S. House of Representatives

Washington, DC

July 14, 1994

Mr. Chairman, members of the Committee, I am honored to be able to testify today on the very important problem of the treatment of juveniles in the criminal justice system. My remarks will focus on risk and protective factors associated with serious delinquency and some policy implications that flow from that discussion. I assume that we all agree that rates of youth crime, especially youth violence, are unacceptably high and pose a substantial threat to the fabric of our society. Because of that, it is essential that we understand the factors that lead some youngsters to become involved in delinquent careers and that we establish programs that are capable of preventing these careers from developing in the first place.

THE DEVELOPMENT OF DELINQUENCY

During the past quarter century, substantial information about the development and course of delinquent behavior has been generated by a number of important longitudinal studies. We have learned that serious delinquency is typically initiated during the early adolescent years and that the onset of this behavior after the early twenties is relatively rare. Crime, in general, is a youthful behavior and, considering the entire life span, involvement in crime is highest during the adolescent years.

While many youth initiate delinquency during the adolescence, there is growing evidence that involvement in delinquency and violence follows a life course trajectory that has precursor behaviors beginning as early as three or four years of age. Children who have an early age of onset for these antisocial behaviors are more likely to progress further along delinquent pathways and to become serious, chronic offenders.

Longitudinal research has also demonstrated that serious delinquency is highly concentrated among a small proportion of all youth. Alternately called chronic offenders or persistent offenders, they constitute a small percentage of the population -- estimates range from about 5 to 15 percent -- but commit the majority of all criminal acts -- estimates range from 50 to 75 percent. These chronic offenders often have a particularly early age of onset. They also exhibit little specialization in their offending careers, committing a wide range of criminal offenses and exhibit very high rates of other problem behaviors. Given their

contribution to the overall rate of crime, successful intervention programs must include strategies for responding to this group and the wide range of problem behaviors in their lifestyles.

RISK FACTORS FOR DELINQUENT BEHAVIOR

Longitudinal studies have also identified many risk factors associated with delinquent behavior. Some of the more salient ones are the following:

Socio-economic Status

1. Socio-economic inequality.
2. Underclass status.
3. Chronic parental unemployment.

Precursor Behaviors

1. Early onset of aggressive and antisocial behavior.
2. Oppositional and conduct disorders.
3. Attention deficit/hyperactivity disorder, impulsivity and other temperamental traits.

Family Characteristics

1. Parental involvement in crime and drug use.
2. Poor attachment to parents.
3. Poor parental monitoring and supervision.
4. Harsh, inconsistent and erratic discipline.
5. Child abuse.

Educational Performance

1. Low commitment to and poor success in school.
2. Lack of attachment to teachers.
3. Dropping out of school.
4. Attending schools characterized by limited resources, disorganized programs, ineffective monitoring of students, and low student/teacher morale.

Peers

1. Associations with delinquent and drug using peers.
2. Membership in juvenile street gangs.
3. Lack of access to or rejection by pro-social peers.

Victimization

1. Being victimized, especially at younger ages, by violent offenses.
2. Child abuse and maltreatment.
3. Co-victimization, the witnessing of chronic violence in the family and community.

Co-Occurring Problem Behaviors

1. Illegal ownership and carrying of firearms.
2. Drug use, especially use of "harder" drugs such as crack cocaine and PCP.
3. Involvement in gangs or organized crime.
4. Involvement in drug sales.

In addition to these individual-level risk factors, research highlights the role that the structure of inner city, poor communities can have on the risk for delinquency. Because of the inequality that typifies American society these neighborhoods are socially isolated and fail to meet the basic needs of their residents. Access to safety, health care, educational opportunities, jobs, housing, and even reasonably priced food stores, is often simply unavailable. The frustration and alienation that this level of inequality engenders cannot be ignored in efforts to reduce delinquency.

Overall, there is clearly no single pathway or cause that leads to youth crime. Factors from many different psychological and social areas are involved in producing this outcome. It is also the case that these risk factors are interrelated and that their interaction is likely to generate a substantially higher risk for delinquency. For example, youth who are poorly supervised by their parents and who have highly delinquent peers have a much higher likelihood of delinquency than do youth experiencing either poor supervision or having delinquent peers.

It is also the case that exposure to multiple risk factors has a particularly strong influence on behavior. Data from the Rochester Youth Development Study, a longitudinal study of delinquency I have been directing since 1986, can be used to illustrate this point. Nine family-based risk factors were identified in the study. They are:

Low Parental Education
Unemployed Head of Household
Family Receiving Welfare
Mother had First Child Prior to Age 18
High Family Mobility
Child Experienced Out-of-Home Placement
Family Members Experienced Trouble with the Law
Family Members Experienced Drug Problems
Child Abuse or Maltreatment

Youth experiencing five or more of these risk factors were considered to be at high risk for engaging in serious delinquency. In fact, three times as many high-risk youth reported involvement in serious delinquency as compared to the lowest risk group.

But not all high-risk youth succumb to these risk factors and actually engage in delinquency. Some high-risk youth are buffered or protected and manage to avoid involvement in delinquent behavior. The Rochester Youth Development Study also identified thirteen factors that protected high-risk youth from this risk. These thirteen protective factors are:

Family Factors
- Parental Supervision
- Child's Attachment to Parent
- Parent's Attachment to Child

Educational Factors
- Reading Achievement
- Mathematics Achievement
- Commitment to School
- Attachment to Teachers
- Aspirations to go to College
- Expectations to go to College
- Parent's Expectation for Child to go to College

Peer Factors
- Peers have Conventional Values
- Parent's Positive Evaluation of Peers

Personal Characteristics
- Self-Esteem

Individually, each of these protective factors had only a small impact on reducing delinquency. Collectively, however, the presence of multiple protective factors had a sizeable impact on reducing delinquency. Of the high-risk youth 80% of those who had fewer than six of these protective factors in their environment reported involvement in serious delinquency. On the other hand, of the high-risk youth only 25% of those who had nine or more of these protective factors in their environment, reported involvement in serious delinquency! That is a rather startling statistic, especially when it is recalled that we are only examining high-risk youth here -- youth who had five or more of the risk factors listed earlier. Even in light of this level of

risk, 75% of them avoided involvement in delinquency if there were multiple protective factors in place.

Although multiple protective factors had a sizeable impact on reducing delinquency, that impact does not appear to be long-lasting. Two or three years after these protective factors were measured, delinquency returned to rather high levels. Thus, protective factors appear to work when they are in place, but do not appear to have long-term effects.

This finding is consistent with the results of much research evaluating the effectiveness of intervention programs. Intervention research has demonstrated that well-conceived and implemented programs can reduce involvement in delinquency during the course of intervention. Unfortunately, that same research has demonstrated that post-intervention effects are, at best, minimal.

IMPLICATIONS FOR INTERVENTION PROGRAMS

The results just presented have a number of important implications for intervention programs. Consistent with the results of longitudinal research, intervention programs should: 1) begin early, 2) be comprehensive, 3) be community-based, 4) be developmentally appropriate, and 5) be made available on a long-term basis.

First, intervention programs should begin early in the life course. The evidence is clear that for many delinquents, especially chronic delinquents, delinquency begins at relatively young ages. It is also evident that once delinquency becomes a part of a person's behavioral repertoire it is very hard to eradicate. Because of that, intervention programs need to begin as early in the life course as possible so that developmental trajectories towards serious delinquency can be interrupted before they become established. Waiting until the late teenage years -- when delinquency is established and co-occurring problem behaviors such as drug use, gang membership and gun use are in place -- is likely to offer too little, too late. By that time, intervention programs simply have too much to overcome to be successful. While programs for older offenders need to be available both to help the youth and to protect society, they are unlikely to have a major impact on reducing delinquency. Well-designed and well-

implemented prevention programs, starting as early as the elementary school years, are far more likely to have a positive impact on behavior.

Second, intervention programs need to be comprehensive precisely because of the multiple risk factors associated with delinquent behavior. At a minimum programs need to provide services that intervene with individual, family, school, and peer factors and the way these factors interact to produce delinquency for an individual. We know from evaluation research that mono-thematic interventions have not worked in the past and we do not think they are likely to work in the future. Comprehensive programs are the only ones that match what is known about the risk and etiological factors associated with delinquent behavior.

Comprehensive programs should be prepared to deal with multiple problem behaviors. Chronic offenders are apt to be heavily involved in many forms of crime and drug use and in other problem behaviors. Programs should be designed so that they can simultaneously respond to these related problems.

Third, general prevention programs should be community-based. Programs that focus on individuals or families are likely to provide services to some high-risk youth in delinquency prone neighborhoods but ignore other high-risk youth from those same neighborhoods. In light of the tremendous impact that peers and street gangs have on adolescent behavior this is a serious problem. For it is likely that the benefits provided at the individual level will be counteracted at the community level as youth who are not in programs continue to negatively influence those who are. Community-wide programs should miss fewer high-risk youth and be somewhat less susceptible to this problem. Another reason to emphasize communities stems from the multiple and interlocking nature of risk factors such as family, school, and peers. When they are strengthened in a coordinated fashion, delinquency is more likely to be reduced. For example, when parents and teachers coordinate their efforts to teach and monitor children, when parents know and are involved with their children's peer groups, and when peer groups are involved in school activities and are supervised by teachers, delinquency is less

likely. Community-based programs are better able to establish these linkages than are programs focused on single families or individuals.

Fourth, intervention programs should be built around the increasingly precise knowledge that longitudinal research has generated about developmental pathways and risk factors. Indeed, only interventions that are firmly grounded in theoretical and empirical knowledge about the course and etiology of delinquency should be encouraged. It is particularly important to identify risk factors that are malleable and then to design programs to change them. For example, research has shown that parenting practices such as monitoring, supervision, and use of appropriate discipline can be manipulated and changed in a positive direction and they are therefore good candidates for interventions. Also, the provision of protective factors that have been shown to reduce delinquency should be central to any intervention. For example, enhancing academic performance and pro-social skills can be accomplished in controlled settings and may reduce levels of delinquent behavior.

Our knowledge of the developmental pathways associated with delinquency also suggests that interventions can and should be age-appropriate. The parenting skills appropriate for controlling the behavior of six and sixteen year olds are vastly different and the application of the age-inappropriate techniques may be quite counterproductive. Programs need to be as flexible as they are comprehensive.

Finally, programs should be developed and implemented for the long-term, covering major portions of the life course. For many offenders delinquent behavior begins early and is episodically exhibited over many, many years. It is unlikely that short-term treatments lasting six or twelve months will be effective in combatting delinquency for these offenders. Indeed, the results of intervention research suggest they are not. A more realistic goal for some persons involved in serious delinquent behavior may be extended supportive and socializing treatment rather than seeking permanent cure from conventional, short-term treatment programs. We base this suggestion on the accumulating evidence that serious delinquent behavior may often be part of a disabling and durable condition that consists of multiple

antisocial and dysfunctional behaviors, and robustly eludes effective short-term treatment. The field has the wherewithal to construct effective and humane long-term supportive environments for seriously delinquent youths and programs such as these need to be explored.

SUMMARY

Serious delinquency in this country has reached alarming levels and shows no sign of abating. To counteract this trend we need to design and implement intervention programs that interrupt at an early stage the developmental pathways that eventually lead to serious delinquency. Waiting to intervene until after serious delinquency is exhibited is unlikely to be successful in the long-run. Programs that attempt to prevent delinquency from developing in the first place are more apt to be successful.

Moreover, based on the growing evidence from longitudinal research these programs should be developed around five key characteristics. First, programs should start early in the life course, before delinquent behavior patterns are established. Second, they should be long-term, available for years rather than months, to combat the persistent nature of delinquent behavior. Third, programs should be comprehensive and, fourth, community-based to respond to the multiple risk factors and multiple co-occurring problem behaviors faced by these youngsters. Finally, these programs need to be developmentally specific and able to change along with the changing needs of the clients. Very few, if any, programs with these features have been implemented in the past -- the magnitude of the current problem of youth crime indicates that they need to be implemented now.

Mr. SCHUMER. Dr. Krisberg.

STATEMENT OF DR. BARRY KRISBERG, PRESIDENT, NATIONAL COUNCIL ON CRIME AND DELINQUENCY

Dr. KRISBERG. Thank you very much. My name is Barry Krisberg. I am president of the National Council on Crime and Delinquency. Since its founding in 1907, the council has been committed to improving society's response to juvenile crime. Over our 87-year history, we have assembled substantial evidence about effective programs to curb youth violence. The accumulated weight of this evidence leads us to conclude that society needs to strengthen the juvenile court, not take it apart.

Current proposals to restrict the juvenile court, in our view, are based on legitimate fears about youth violence, but also quite a few myths. Recently, we were commissioned by the Annie E. Casey Foundation, which is the largest private philanthropy dedicated to underprivileged children, to look at some of the assumptions driving policy; and I want to mention in brief form—and this is summarized in this publication entitled "Images and Reality"—what we found.

First, that contrary to the media coverage, juvenile crime is not rising out of control. Most measures of juvenile crime actually suggest that juvenile crime is going down. For example, if you just consider the part one offenses, index offenses, juveniles represent less of a share of those arrests than they did 10 years ago. If we consider clearances for violent crimes, juveniles represented a smaller proportion of clearances for violent crimes in 1989, compared to 1972.

Mr. SCHUMER. Clarify for the record what you mean by "clearances."

Dr. KRISBERG. Well, arrest statistics include numbers of persons arrested and the number of crimes that are actually solved by an arrest. Because juveniles—this is critical, because juveniles tend to commit their crimes in groups; that magnifies the number, so actually, the important number for juveniles is how many crimes are cleared by an arrest. Ten kids picked up in a drive-by shooting counts 10 arrests, the way we count these things.

But the point is, we have a serious crime problem—and I am not minimizing it—worse than any industrialized country; but for the last 15 years this problem has essentially been stable, so it is not a sudden, runaway issue.

What is a runaway issue is juvenile homicide. All the research that we look at, our own and around the country, strongly indicates that you cannot separate the problem of juvenile violence from the problem of guns. And, Congressman Schumer, you are right on the money in your focus on gun control, because that will be, in my opinion, the single most productive step in this proceeding to reduce.

Mr. SCHUMER. I wish Mr. Schiff were still here to hear this. We will let counsel make sure he tells him.

Dr. KRISBERG. I will certainly reiterate.

The other point is that juveniles are far more likely to be the victims. There were roughly 5,000 juveniles killed by their parents or guardians in the last year where the data were available. In that

same year, 2,500 kids were killed by other kids. So you are twice more likely to be killed by your parent and guardian than another teenager. Again, I am not excusing or minimizing youth violence, but we have to put perspective on this. Teenagers are far more likely to be the victims of violence than the perpetrators.

The presumed leniency of the juvenile court, our research, and others, suggests—and others mentioned this—that conviction rates and penalties for violent crime in the juvenile court appear to be as high or higher than in the adult system. Transferring juveniles to adult court has not reduced youth crime any place that any research has been done; and in fact, what we do know for sure is that transferring juveniles to the adult courts has tended to result in racially disparate sentencing in which minorities who victimize white victims are much more likely to be transferred, and a series of studies in a number of cities support that.

Finally, there is an assumption that nothing works. In fact, there are many proven programs, and John Wilson referred to a report we just issued which lists programs where there is clear research evidence that serious offenders can be handled in these programs. There is an emerging professional consensus that we can deal with violent juvenile crime. It is expressed in the report called Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders that Mr. Wilson spoke of.

[The report referred to above was retained in the subcommittee files.]

Dr. KRISBERG. This perspective, this comprehensive OJJDP strategy is well grounded in research and practical experience. It speaks to the need to begin to beef up at the front end of the system, early intervention. There is no question that we have to respond faster and earlier, when kids start breaking the law. We have spent—we have waited too long and we have invested too much in the back end. We have to invest in the front end.

The kind of model system we are talking about has to include a continuum of programs, and we have to assume that if youth do well, they move closer to home; and if they screw up, they need to be moved into tighter control and penalties, and that they get put into these levels of programs based on objective public safety criteria. It seems to me you decide, based on public safety, where kids ought to be; you have them demonstrate if they are ready for a less restrictive penalty. But if they demonstrate they are not ready, then they need to be able to be moved back.

These programs must be small. It is far more likely that a youth can be rehabilitated in a 25-bed Massachusetts facility than a 300-bed New York facility that is dealing with the same kind of violent offenders. No professional worth his salt would argue that we are going to try to collect a whole bunch of dangerous adolescents together and figure we are going to do anything other than make it worse in that environment.

So the programs have to be small—that cuts down on the gang activity—and most important, there has to be aftercare. It doesn't really matter how much money you spend in a program if the kid is just dumped back into the South Bronx or Bedford–Stuy in the same drug and gang environment, and there is no support; whatever money you invest in the program is going to be lost.

Now, if you want to see programs—examples like this, you won't see a perfect model, but you will come very close in the States of Missouri and Massachusetts that have been doing this approach, early intervention, graduated sanctions, aftercare, for quite a few years. Massachusetts is the longest; Massachusetts for 20 years, Missouri for the 10 years. The research on these programs suggests that they get recidivism results substantially better than most States. Massachusetts has a recidivism rate that is a third that of California.

Mr. SCHUMER. What are they?

Dr. KRISBERG. Excuse me? For example, if you follow up Massachusetts kids over a 3-year period, about 23 percent of them will be incarcerated any place over a 3-year period. In California, the number is 70 percent, so it is 23 percent against 70 percent——

Mr. SCHUMER. OK.

Mr. KRISBERG [continuing]. Over a 3-year period.

Mr. SCHUMER. I am just going to have to ask you to wrap up.

Mr. KRISBERG. OK. The last thing I want to say is not only is this system effective, but it saves money. We did an analysis, which is in my testimony, which says that if we could actually put the kids in the programs that they ought to get, based on public safety and the programs; that is, put them in the appropriate public safety categories and give them the programs they ought to get, we would save $300 million a year.

Massachusetts, as one microcosm, saves $11 million a year by just being smarter, smarter with how they do things. So within the comprehensive strategy is an approach which both works better and is cheaper. And my recommendation to you is to support the Office of Juvenile Justice in implementing that strategy. If we help States go in that direction, we are going to save young lives and we are going to save money for the taxpayers.

Mr. SCHUMER. OK.

[The prepared statement of Dr. Krisberg follows:]

SAVING YOUNG LIVES AND SAVING MONEY

by

Barry Krisberg, Ph.D.

Testimony before the

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Crime and Criminal Justice

July 14, 1994

NATIONAL COUNCIL ON CRIME AND DELINQUENCY

NCCD

Headquarters Office 685 Market Street, Suite 620 • San Francisco, CA 94105
(415) 896-6223 • Fax (415) 896-5109

Midwest Office 6409 Odana Road • Madison, WI 53719
(608) 274-8882 • Fax (608) 274-3151

East Coast Office S.I. Newhouse Center at Rutgers • 15 Washington Street,
Fourth Floor • Newark, NJ 07102
(201) 643-5806 • Fax (201) 648-1275

SAVING YOUNG LIVES AND SAVING MONEY

My name is Barry Krisberg. I am the President of the National Council on Crime and Delinquency (NCCD). Since its founding in 1907, the Council has been committed to improving society's response to juvenile crime. Over its 87-year history, NCCD has assembled substantial evidence about effective programs to curb youth violence. This accumulated body of empirical evidence leads the NCCD to conclude that society must strengthen the juvenile justice system, not abolish the separate court for children.

Current proposals to restrict the jurisdiction of the juvenile court are based on fears and myths. For example, we recently issued a report, commissioned by the Annie E. Casey Foundation, examining the major assumptions driving the public policy debate on youth crime (Jones and Krisberg, 1994). Contrary to the often inflammatory media coverage, the data show that:

(1) juvenile crime is not rising out of control;

(2) juveniles are far more likely to be the victims of violence rather than its perpetrators;

(3) conviction rates and penalties for violent crime may be greater in the juvenile court than in the adult system;

(4) transferring juveniles to adult courts has not reduced youth crime and often results in racially disparate sentencing; and

(5) there are several proven juvenile justice programs for serious juvenile offenders.

There is an emerging professional consensus on how best to restructure the nation's juvenile justice system. This consensus

view is well-grounded in research and practical experience. The core principles of this model are summarized by John Wilson and James Howell (1993) for the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in its Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders.

The OJJDP Comprehensive Strategy seeks to integrate effective prevention programs with a system of graduated sanctions for offenders. These sanctions include **immediate sanctions** for first time offenders, **intermediate sanctions** for repeat offenders and **secure confinement** for violent and chronic serious offenders.

A model system of graduated sanctions should combine reasonable, fair, humane and appropriate penalties with rehabilitative services. There must be a continuum of care consisting of a variety of diverse programs. Youths should move between different levels of the continuum based on their behavior. Offenders must understand that they will be subject to more severe sanctions should they continue to reoffend (Krisberg, 1992).

Objective risk assessment instruments should be employed to determine the proper level of control that is appropriate for each youth. These assessments are based on the actual risk that each offender poses to public safety, taking into account the severity of the instant offense, the number and seriousness of prior crimes and the presence of other proven risk factors.

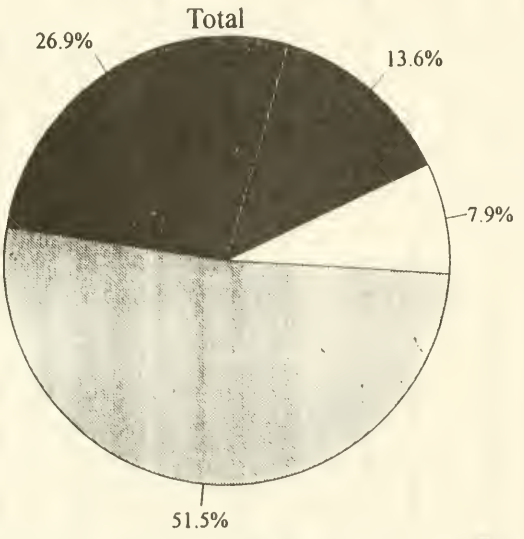
It is crucial that all programs in the continuum be kept small enough to ensure that offenders receive individualized attention. Treatment plans must be tailored to meet the unique needs of each

youthful offender as well as the strengths and weaknesses of his or her family situation. Treatment programs must involve families or extended families in the rehabilitative process whenever possible. Residential programs must have strong and extensive aftercare or follow-up components to assist the youngster in successfully returning to a law-abiding life.

While a perfect model does not exist, the states of Missouri and Massachusetts come closest to implementing the core principles discussed above. Research has consistently shown that these states have lower recidivism rates than states with more conventional approaches. Further, these states achieve substantial budgetary savings because they sparingly utilize expensive long-term secure care and rely heavily on less expensive short-term secure care and community-based programs (Krisberg and Austin, 1993). For instance, an NCCD study of the Massachusetts Division of Youth Services (DYS) estimated that the state would have to spend an additional $11 million annually if DYS operated like most other states (Krisberg and Austin, 1993). This same study found that the prudent use of community-based programs in Massachusetts did not significantly effect the crime rate. Indeed, Massachusetts has one of the lowest rates of juvenile violence in the nation.

Let me illustrate the potential taxpayer savings if an effective system of graduated sanctions were applied on a nationwide basis. In 1992, there were approximately 50,260 admissions to state juvenile corrections systems. Figure 1 shows the breakdown of these admissions based on data from 28 states in

FIGURE 1
ESTIMATED PROPORTIONS OF ADMISSIONS TO STATE JUVENILE CORRECTIONS SYSTEMS BY SEVERITY OF OFFENSE



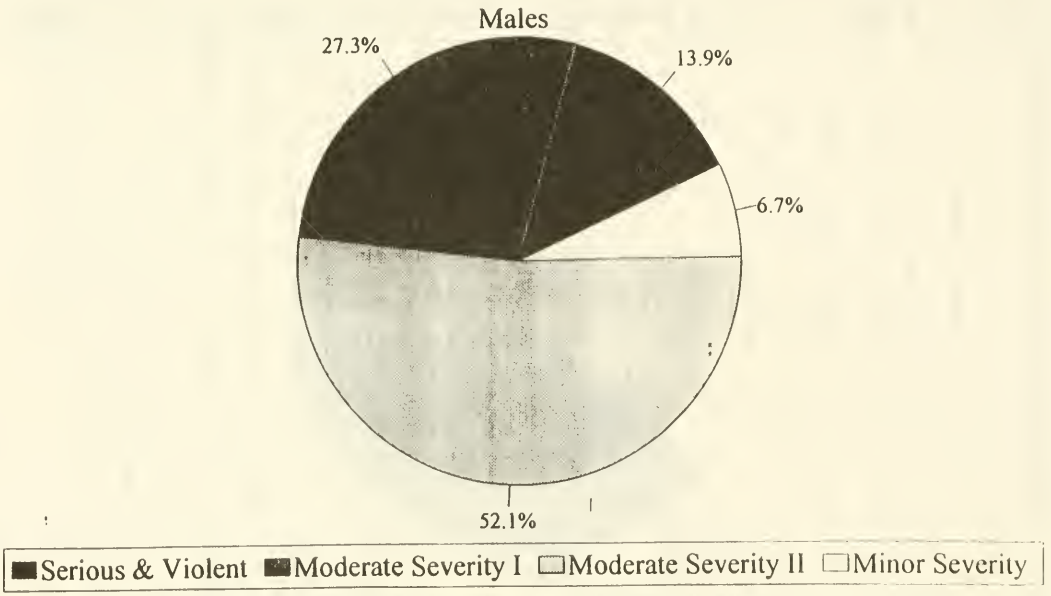
Serious & Violent: Murder, Manslaughter, Homicide, Forcible Rape, Other Violent Sex Offenses, Sodomy, Kidnapping, Endangerment, Robbery (with priors), and Assault (with priors)
Minor Severity: Shoplifting, Technical (Probation or Parole), Minor Public Order, Status Offenses, Driving W/O License, Minor Traffic, Dependency, and Special Court Proceedings
Moderate Severity are offenses not categorized in Serious & Violent or Minor Severity such as Property, Drug, Public Order, and Traffic Offenses (I = with prior state commitments, II = no prior state commitments)

Source: National Council on Crime and Delinquency; Juveniles Taken Into Custody Research Program; State Juvenile Corrections Systems Reporting Program; estimates based on 28 states reporting for 1992.

terms of four major categories of public safety risks. The most serious and violent offenders accounted for just 14 percent of these admissions. Another 27 percent were serious property offenders with prior commitments and 52 percent were property offenders with no prior state corrections admissions (although they may have been on probation or detained at the local level). About eight percent were committed for relatively minor crimes. Figures 2 and 3 report these same public safety risk distributions for males and females. It is worth noting that 43 percent of incarcerated young women fall into the lowest risk category – suggesting the urgent need for alternatives to state institutions for young women.

NCCD took these risk data and simulated the costs if the juvenile offenders in each risk group were placed in the sorts of programs that most professionals agree are appropriate for these youngsters. Thus, the most dangerous youths are assumed to be placed in an well-structured secure treatment program such as the Robert F. Kennedy Action Corps in Massachusetts, the Thomas O'Farrell School in Maryland or the Texas Youth Commission Capital Offender Program. The next highest risk group would be assigned to a 90-day boot camp or wilderness program followed by nine months of aftercare services. An example of such a program is Camp Raulston in Cleveland, Ohio, which is funded by OJJDP and operated by the North American Family Institute. The next offender group would be placed in a day treatment program similar to the highly successful programs in Florida, Georgia, Texas and South Carolina run by the

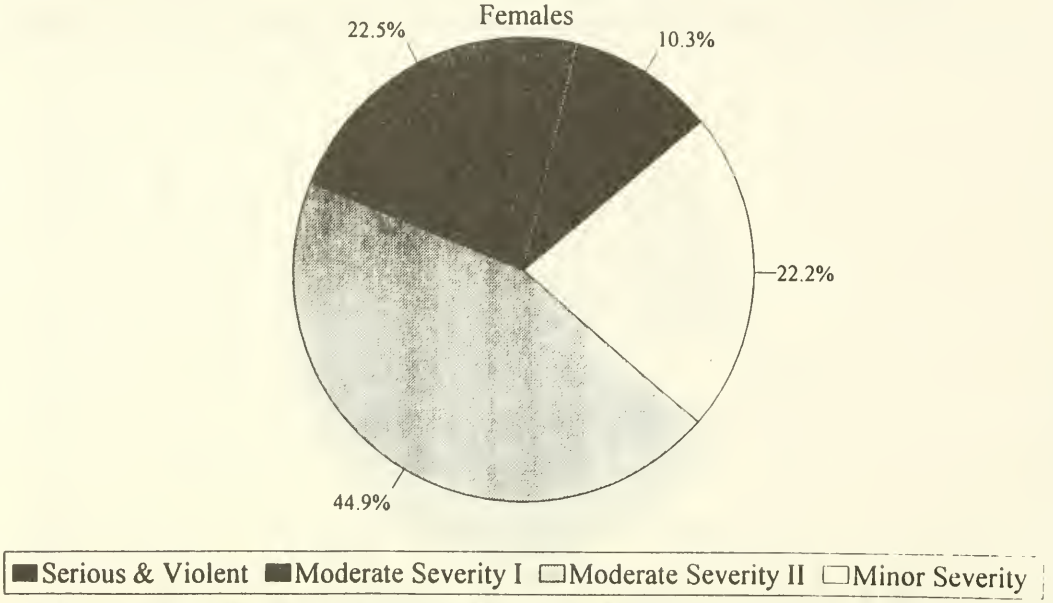
FIGURE 2
ESTIMATED PROPORTIONS OF ADMISSIONS TO STATE JUVENILE CORRECTIONS SYSTEMS BY SEVERITY OF OFFENSE



Serious & Violent: Murder, Manslaughter, Homicide, Forcible Rape, Other Violent Sex Offenses, Sodomy, Kidnapping, Endangerment, Robbery (with priors), and Assault (with priors)
Minor Severity: Shoplifting, Technical (Probation or Parole), Minor Public Order, Status Offenses, Driving W/O License, Minor Traffic, Dependency, and Special Court Proceedings
Moderate Severity are offenses not categorized in Serious & Violent or Minor Severity such as Property, Drug, Public Order, and Traffic Offenses (I = with prior state commitments, II = no prior state commitments)

Source: National Council on Crime and Delinquency; Juveniles Taken into Custody Research Program; State Juvenile Corrections System Reporting Program, estimates based on 28 states reporting for 1992.

FIGURE 3
ESTIMATED PROPORTIONS OF ADMISSIONS TO STATE JUVENILE CORRECTIONS SYSTEMS BY SEVERITY OF OFFENSE



Serious & Violent Murder, Manslaughter, Homicide, Forcible Rape, Other Violent Sex Offenses, Sodomy, Kidnapping, Endangerment, Robbery (with priors), and Assault (with priors)
Minor Severity Shoplifting, Technical (Probation or Parole), Minor Public Order, Status Offenses, Driving W/O License, Minor Traffic, Dependency, and Special Court Proceedings
Moderate Severity are offenses not categorized in Serious & Violent or Minor Severity such as Property, Drug, Public Order, and Traffic Offenses (I = with prior state commitments, II = no prior state commitments)

Source: National Council on Crime and Delinquency; Juveniles Taken Into Custody Research Program; State Juvenile Corrections System Reporting Program; estimates based on 28 states reporting for 1992.

Associated Marine Institute. Finally, the lowest risk group would be assigned to an intensive supervision program such as the Choice Program in Maryland, Key Inc. in Massachusetts or the Allegheny County, Pennsylvania Intensive Supervision Program.

The summary of this cost analysis (Exhibit A) shows that fully utilizing these well-tested and smart corrections programs would have cost the nation approximately $1.1 billion in 1992. By contrast, the actual expenditures for handling these youths were closer to $1.4 billion in that year. Thus, a sound system of graduated sanctions could have saved the taxpayers over $300 million. These savings could have helped communities begin investments in prevention and early intervention programs, which are the more powerful components of a juvenile crime control strategy.

The Federal Role in Juvenile Justice Reform

Since its founding in 1974 the OJJDP has, for most of those years, been a beacon of enlightened leadership and solid research for the juvenile justice field. The OJJDP supported much of the research and program innovation discussed in my testimony. The federal government role in reducing the jailing of children, creating more humane responses for runaway youths and responding to the tragic over-representation of minorities in penal institutions has been exemplary. Juvenile justice practitioners are eager for further leadership and assistance from OJJDP to move ahead the needed changes in juvenile justice.

EXHIBIT A

COST ANALYSIS OF ATTORNEY GENERAL'S SERIOUS, VIOLENT AND CHRONIC JUVENILE OFFENDER TREATMENT PROGRAM

1. Estimated Annual Admissions to State Juvenile Corrections Systems in 1992: 46,139 Males + 4,121 Females = 50,260

2. Estimated Cost of Serious, Violent and Chronic Juvenile Offender Treatment Program: 6,848 Juveniles/Year x $60,000 Juvenile/Year = $410,880,000

   Annual costs based on one year confinement in a secure treatment facility.

3. Estimated Cost of Alternative Programs for Moderate Severity I Juvenile Offenders: 13,529 Juveniles/Year x $20,000 Juvenile/Year = $270,580,000

   Annual costs based on projected 90 day stay in a Boot Camp or other short-term secure program followed by 9 months intensive aftercare.

4. Estimated Cost of Alternative Programs for Moderate Severity II Juvenile Offenders: 25,892 Juveniles/Year x $15,000 Juvenile/Year = $388,380,000

   Annual costs based on phased participation in intermediate sanctions involving short-term secure custody (30 days) in residential treatment followed by day treatment and then intensive supervision.

5. Estimated Cost of Alternative Programs for Minor Severity Juvenile Offenders: 3,992 Juveniles/Year x $7,000 Juvenile/Year = $27,944,000

   Annual costs based on regular or intensive probation supervision, mentoring or other community-based program.

6. Total Cost of Serious, Violent and Chronic Juvenile Offender Treatment Programs and Alternative Programs for other Juvenile Offenders:
   $410,880,000 + $270,580,000 + $388,380,000 + $27,944,000 = $1,097,784,000

7. Estimated Cost of Current Programs for Juvenile Offenders in State Juvenile Corrections Systems in 1992:
   50,260 Juvenile Admissions x $105 Juvenile/Day x (ALOS disaggregated by sex and severity) = $1,424,475,000

   Current cost based on average daily cost per juvenile in 1992 as reported by 42 state agencies in the 1993 Juvenile Corrections Yearbook. Average length of stay based on 1992 releases raported by 27 stete juvenile correction agencies.

8. Estimated Annual Savings between the Cost of Current and Proposed Correctional Programs for Juvenile Offenders:
   $1,424,475,000 (Current/Year) - $1,097,784,000 (Proposed/Year) = ($326,691,000)

The OJJDP's Comprehensive Strategy is a wonderful place to start. For the past several months, NCCD has been researching the most effective prevention and graduated sanction programs to elaborate the OJJDP policy position. By the late fall, we will have a prototype program showing communities how to systematically and effectively respond to serious youth crime.

The OJJDP Comprehensive Strategy should be supported via training and technical assistance efforts, as well as research and demonstration programs. In this way, the federal government can help communities implement the policies and programs that have been shown to be cost-effective in reducing youth crime. Further, in light of the enormous cost savings involved, federal financial investments in states implementing the OJJDP Comprehensive Strategy would more than pay for themselves in a few years.

Concluding Observations

There are those who say we should "write off" the current generation as lost. Others argue that we should abolish the juvenile court and treat children as if they were simply small adults. Neither of these positions are grounded in facts or rigorous research. The contemporary fear and frustration over youth violence does require affirmative government responses, however, destroying the juvenile court is the wrong approach. Instead, the Congress needs to examine how federal resources can be blended with state and local funds to strengthen the juvenile court. We need to improve the training of judges and work with them to expand the

range of dispositional options available to the court.

Attorney General Janet Reno has often been quoted about the need to "reweave the fabric of society". Reforming and strengthening the nation's juvenile justice system must be part of that social reconstruction process. The nation's juvenile justice professionals should be brought into the public policy discussion. Their experiences and knowledge in partnership with the OJJDP could help us escape the downward spiral of failing justice policies and escalating violence. By relying on proven and research-based strategies, communities can both save young lives and save money.

REFERENCES

Michael Jones and Barry Krisberg. 1994. *Images and Reality: Juvenile Crime, Youth Violence and Public Policy*. San Francisco, CA: NCCD.

Barry Krisberg. 1992. *Juvenile Justice: Improving the Quality of Care*. San Francisco, CA: NCCD.

Barry Krisberg and James Austin. 1993. *Reinventing Juvenile Justice*. Newberry Park, CA: Sage Publications.

John Wilson and James Howell. 1993. *Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders*. Washington, D.C.: OJJDP.

Mr. SCHUMER. Mr. Loughran.

STATEMENT OF EDWARD J. LOUGHRAN, DIRECTOR, ROBERT F. KENNEDY MEMORIAL, NATIONAL JUVENILE JUSTICE PROJECT

Mr. LOUGHRAN. Thank you, Mr. Chairman.

In my statement, I do describe that cyclical process in the juvenile corrections in Massachusetts, for about 126 years since the first-launched institution was founded. What I have seen is there was a period of calm when kids got along with each other and staff and made some progress in the program.

It was usually followed—in fact, in the early days, they began to get very overcrowded; if you can imagine, 600 kids in 1855 in the institution. That led to chaos and violence in the system, kid against kid, kid against staff and staff against kid. Usually that was exposed by the media, investigation, another period of reform.

It seems to me that any system in the country today, other than—well, even Massachusetts is having some problem with overcrowding today because of some budget cuts. But many examples are in these latter stages of the cycle that I have just talked about. They are overcrowded, there is inadequate treatment, kids are being released to the streets with virtually no aftercare or case management, caseloads from 80 to 150.

Rehabilitation suffers when you don't arrange the programs to deal with some of the problems that speakers before me said today. So the juvenile experience meant to offer protection and relief from abusive situations itself is becoming a detrimental experience which is leading to more defiance, and it is a surefire way of putting kids into the adult system, because they are going out and they are committing more crimes to—witness the New York experience.

So Massachusetts really decided to move away and pioneered a new approach in 1972 when it closed down its institutions. These had become warehouses; they were being investigated by local government and the Federal Government at the time.

The fact is that we have had this experience for 22 years now. They used to call it the Massachusetts experiment. It is no longer an experiment; it is a tested and mature and studied organization. It really does have a balanced system of care.

I think the point he made is really very important. We do lock kids up. People say no one is locked up in Massachusetts, and even the juvenile system suffered some of the consequences of the Willie Horton situation. The fact is, we have small—actually they are 15-bed programs before some of the overcrowding took place, 15-bed, but then group homes and outreach and tracking which is a one-to-five caseworker-to-kid ratio in the community; and it is a continuum. Kids move up and down the continuum.

We really do believe that kids need to be gradually reintroduced back into the community. The institutionalization, the deinstitutionalized model has the best chance of not just deterring juvenile offenders from further delinquency, but of rehabilitating them without sacrificing public safety; and you heard about the study.

There are a lot of good programs around the country, but I think Massachusetts is the system that has really put it in place, not just

one group home or 1-day treatment program, but this continuum. We have crafted policies and structured programs so that the kids do move through this system based on their assessment of risk and need. There is a need for a revocation.

You talked about gradual sanctions, graduated sanctions. Kids are testing out the gains that they have made, when they go back to the community. Sometimes they fail. It is important for the system to be in place to bring that kid back in before the kid picks up a new offense.

Mr. Reinharz mentioned a study in New York. I used to work for DFY for 10 years. What is said in that report is that DFY dismantled their case management and their aftercare system, their community-based reintegration program. Of course, the recidivism is going to skyrocket when you do that, because kids make the gains in the programs and it is costing $50,000 to $60,000 a year. You give the kid carfare in some cases, you put them back on the streets in New York or Queens or Brooklyn or Staten Island and it is not long before all of those gains are dissipated because of the temptations out in the community.

We are not spending our money smart in juvenile corrections. We need to put as much, if not more, into the reintegration phase.

There are 10 elements of our system that are in the testimony; I won't repeat them now. What I really want to end with is that there really is not a stereotypical violent juvenile offender. There is a rating in terms of offense, seriousness, the risk of recidivism and their service needs. Too much intervention for some is going to be a waste of resources and overlabels youth.

There are 100,000 kids locked up around the country. Probably 40 percent of them could be dealt with more cheaply and more effectively in community programs—too little for others. Some kids, especially the kids that get waived to the adult system, the charges get reduced and they are back on the streets; and they probably should have gotten, and they could have gotten a longer time in the juvenile system. So too little for others is going to threaten public safety and prolong the problem behaviors that the system seeks to correct.

Thank you very much.

[The prepared statement of Mr. Loughran follows:]

TESTIMONY OF EDWARD J. LOUGHRAN, DIRECTOR
ROBERT F. KENNEDY MEMORIAL:
NATIONAL JUVENILE JUSTICE PROJECT
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME AND CRIMINAL JUSTICE
"THE TREATMENT OF JUVENILES IN THE CRIMINAL JUSTICE SYSTEM"
JULY 14, 1994

AN UNPUBLISHED HISTORY OF THE MASSACHUSETTS JUVENILE JUSTICE SYSTEM DESCRIBES A CYCLICAL PROCESS WHICH REPEATED ITSELF FOR THE 126 YEAR EXISTENCE OF ITS STATE OPERATED REFORM SCHOOLS. THE AGENCY ENJOYED A PERIOD OF CALM WHERE STAFF AND YOUTH INTERACTED AND YOUTH MADE PROGRESS; THIS WAS USUALLY FOLLOWED BY OVERCROWDING OF ITS INSTITUTIONS - IN FACT WITHIN A DECADE OR SO OF OPENING THE FIRST INSTITUTION IN 1846 , ITS POPULATION SOARED TO 600 YOUTH. THE NEXT PERIOD WAS MARKED BY OLDER PREDATORY YOUTH ATTACKING YOUNGER, MORE VULNERABLE ONES, ESCAPES, YOUTH ASSAULTING STAFF AND THEN INTIMIDATED STAFF TURNING ON YOUTH. NEXT FOLLOWED THE EXPOSURE OF INCIDENTS AND PROBLEMS BY THE MEDIA WHICH USUALLY TRIGGERED AN INVESTIGATION BY STATE AND FEDERAL AUTHORITIES AND WAS ULTIMATELY FOLLOWED BY A PERIOD OF REFORM.

THIS CYCLE CAN PROBABLY BE APPLIED TO ANY JUVENILE CORRECTIONAL SYSTEM IN THE COUNTRY - AND MOST SYSTEMS ARE CURRENTLY IN ONE OR ANOTHER OF THE LATTER FOUR STAGES OF THIS CYCLE.

MORE JUVENILES ARE BEING LOCKED UP THAN EVER BEFORE. INSTITUTIONS HOUSING THESE YOUTH ARE OVERCROWDED AND

DANGEROUS. ADDITIONALLY, YOUTH ARE BEING RELEASED TO THE COMMUNITY WITH LITTLE OR NO AFTERCARE SERVICES ONLY TO CREATE NEW VICTIMS. CASELOADS OF 80 TO 150 ARE COMMON. CONSEQUENTLY, THE JUVENILE JUSTICE SYSTEM IS EXPERIENCING A CREDIBILITY PROBLEM WITHIN THE LARGER CRIMINAL JUSTICE SYSTEM AND LOSING THOUSANDS OF YOUTH EACH YEAR TO THE ADULT SYSTEM. IN LIGHT OF THIS SOBERING PICTURE, IS IT NOT TIME TO COME UP WITH A BETTER AND MORE CREDIBLE APPROACH THAN THE ONE WE NOW RELY ON?

IN 1972, MASSACHUSETTS PIONEERED A NEW WAY TO HANDLE JUVENILE OFFENDERS. ORIGINALLY CALLED THE MASSACHUSETTS EXPERIMENT, IT IS NOW REGARDED AS THE MASSACHUSETTS EXPERIENCE, A MATURE AND TESTED SYSTEM OF CORRECTIONS. THE MASSACHUSETTS JUVENILE CORRECTIONAL SYSTEM WAS COMPLETELY TRANSFORMED DURING THE 1970'S. IT WAS THE FIRST STATE AND ULTIMATELY ONE OF THE ONLY JURISDICTIONS IN THIS COUNTRY TO CLOSE ITS LARGE WAREHOUSE-LIKE INSTITUTIONS AND DEVELOP A BALANCED SYSTEM OF CORRECTIONS. TODAY, THE MASSACHUSETTS DEPARTMENT OF YOUTH SERVICES (DYS) RUNS A PREDOMINANTLY COMMUNITY-BASED SYSTEM OF CARE WITH EMPHASIS ON GRADUAL REINTEGRATION OF YOUTH INTO THE COMMUNITY. THE DEPARTMENT OPERATES SEVERAL SMALL, MAXIMUM SECURE FACILITIES FOR ITS MOST SERIOUS OFFENDERS. LESS SERIOUS OFFENDERS WHO DO NOT WARRANT SECURE CONFINEMENT ARE PLACED IN RESIDENTIAL GROUP HOMES AND OUTREACH AND TRACKING PROGRAMS (1 TO 5 CASEWORKER TO YOUTH RATIO) DEPENDING ON THE YOUTH'S LEVEL OF RISK.

OUR EXPERIENCE OVER THE LAST 22 YEARS CONVINCES US THAT A DEINSTITUTIONALIZED JUVENILE CORRECTIONS MODEL HAS THE BEST CHANCE OF NOT JUST DETERRING JUVENILE OFFENDERS FROM FURTHER DELINQUENT ACTS BUT OF REHABILITATING THEM WITHOUT SACRIFICING PUBLIC SAFETY.

IN 1989, THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY RELEASED A RESEARCH STUDY WHICH HAILED DYS AS THE MOST EFFECTIVE JUVENILE CORRECTIONS AGENCY IN THE COUNTRY - ONE WHICH HAD A LOW RECIDIVISM RATE AND WAS AT THE SAME TIME COST EFFECTIVE.

NEARLY EVERY JURISDICTION IN THE COUNTRY CAN POINT TO ONE PROGRAM OR ONE INTERVENTION WHICH WORKS WITH CERTAIN YOUTH - IT MIGHT BE A GROUP HOME LIKE ALPHA OMEGA RUN BY LIFE RESOURCES, INC. IN CHELMSFORD, MASSACHUSETTS, OR A BOOT CAMP SUCH AS CAMPS MUNZ AND MENDENHALL, TWO DRUG TREATMENT BOOT CAMPS CONDUCTED BY THE LOS ANGELES PROBATION DEPARTMENT NEAR LAKE HUGHES, CALIFORNIA OR A DAY TREATMENT PROGRAM SUCH AS THE MANY OPERATED BY THE ASSOCIATED MARINE INSTITUTES, INC. OF TAMPA, FLORIDA OR A COMMUNITY INTENSIVE SUPERVISION PROGRAM SUCH AS THE ALLEGHENY COUNTY PENNSYLVANIA PROBATION PROGRAM WHICH HIRES INDIGENOUS COMMUNITY MEMBERS AS STAFF AND COMBINES ELECTRONIC MONITORING TECHNOLOGY WITH SMALL CASELOAD SUPERVISION.

BUT THE UNIQUENESS OF THE MASSACHUSETTS JUVENILE CORRECTIONAL SYSTEM IS ITS ABILITY TO CRAFT POLICIES AND STRUCTURE PROGRAMS SO THAT A YOUTH'S PLACEMENT AND MOVEMENT THROUGH THE SYSTEM IS BASED ON AN ASSESSMENT OF

HIS/HER OFFENSE AND RISK SEVERITY AS WELL AS HIS/HER NEEDS. YOUTHS MOVE FROM SECURE TREATMENT TO COMMUNITY-BASED RESIDENTIAL AND NON-RESIDENTIAL SUPERVISION AS THEY DEMONSTRATE THEIR ABILITY TO SOLIDIFY THE GAINS THEY HAVE MADE IN CONFINEMENT. YOUTHS WHO FAIL TO MEASURE UP TO EXPECTATIONS IN THE COMMUNITY ARE OFTEN RETURNED TO A HIGHER LEVEL OF SECURITY AND SUPERVISION IN ORDER TO STABILIZE THEIR BEHAVIOR.

THE MASSACHUSETTS SYSTEM IN LEARNING THE LESSONS OF THE PAST, IS GUIDED BY TEN FUNDAMENTAL PRINCIPLES OR ELEMENTS OF A RATIONAL, CREDIBLE, ACCOUNTABLE AND MEASURABLE JUVENILE CORRECTIONS APPROACH.

1. **A CLASSIFICATION PROCESS**, WHEREBY SERIOUS OFFENDERS ARE SEPARATED FROM LESS SERIOUS OFFENDERS, AND WHERE ALL ADJUDICATED YOUTH ARE EVALUATED AS TO THE DEGREE OF THEIR DANGEROUSNESS, THE SERIOUSNESS OF THEIR CRIME, AND THE MOST APPROPRIATE PLACEMENT SETTING.
2. **A TREATMENT PLAN** IS DEVELOPED FOR EACH YOUTH, BASED ON A CASEWORKER'S ASSESSMENT OF THAT YOUTH AFTER GATHERING IN-DEPTH INFORMATION PERTAINING TO THE YOUTH AND HIS/HER FAMILY, SOCIAL AND MEDICAL HISTORY.
3. **A CASE MANAGEMENT PLAN**, TO ENSURE THAT THE TREATMENT PLAN IS ADHERED TO AND IS ADJUSTED ACCORDING TO THE CHANGING NEEDS OF THE YOUTH OR ANY NEW AND RELEVANT INFORMATION. IDEALLY, THE CASEWORKER RESPONSIBLE FOR DEVELOPING THE

TREATMENT PLAN REMAINS THE SUPERVISOR OF THE YOUTHS' CASE FOR THE DURATION OF HIS/HER COMMITMENT.

4. **THE ESTABLISHMENT OF A DECENTRALIZED SYSTEM** WHEREBY GEOGRAPHIC REGIONAL OFFICES ARE SET UP TO HOUSE CASEWORKERS AND REGIONAL ADMINISTRATORS WITH DESIGNATED BUDGETS TO BUY SPECIFIC SERVICES FOR THE YOUTH FROM THEIR REGION. THIS ENSURES THAT SYSTEMS LIVE WITHIN THEIR BUDGET, AND ENCOURAGES THAT MONEY BE SPENT MORE WISELY. THE OPERATION OF REGIONAL OFFICES FOSTERS ENHANCED COMMUNITY RELATIONS AND ALLOWS FOR INCREASED ACCESS TO COMMUNITY RESOURCES. IT ALSO PROVIDES FOR AN OVERALL BETTER RELATIONSHIP BETWEEN THE JUSTICE SYSTEM AND THOSE LIVING NEAR PROGRAMS.

5. **PRIVATIZATION**, WHEREBY SYSTEMS CONTRACT FOR SERVICES THROUGH PRIVATE PROVIDERS OFFERING VERY SPECIFIC SERVICES AND PROGRAMS, WHICH CREATES HEALTHY COMPETITION AND ENSURES THE BEST SERVICES AVAILABLE AT THE MOST COMPETITIVE PRICE. THIS ALSO ENABLES SYSTEMS TO SEEK OUT SERVICES THAT BEST MATCH THE SPECIFIC NEEDS OF THE YOUTH IN CUSTODY, RATHER THAN PROVIDING THE SAME REHABILITATIVE SERVICE TO ALL YOUTH, REGARDLESS OF THE SPECIAL NEEDS THEY PRESENT.

6. **A CONTINUUM OF CARE APPROACH**, THAT HAS AS ITS GOAL THE GRADUAL REINTEGRATION OF THE YOUTH BACK TO THE COMMUNITY AND SCHOOLS. THIS APPROACH TAKES INTO CONSIDERATION THAT NOT EVERY YOUTH NEEDS TO START HIS/HER PLACEMENT IN A SECURE FACILITY, AND THAT THE DEGREE OF RISK POSED BY MANY WOULD ALLOW THEM TO BEGIN IN A COMMUNITY-BASED PROGRAM OR EVEN A

DAY TREATMENT OR OUTREACH & TRACKING PROGRAM, THUS BRINGING THE OVERALL COSTS DOWN.

7. A **TREATMENT COMPONENT** THAT HAS AT ITS CORE AN **EDUCATION** CURRICULUM THAT IS SUPERIOR TO WHAT THEY WERE RECEIVING IN PUBLIC SCHOOL. THIS INCLUDES SPECIAL EDUCATION CLASSES. ENHANCED TEACHER TO YOUTH RATIOS, AND A COURSE DESIGN THAT WILL FACILITATE THE EVENTUAL RETURN OF THE YOUTH TO HIS/HER PUBLIC SCHOOL. CASEWORKERS MUST WORK CLOSELY WITH SCHOOL SYSTEMS IN PREPARING A YOUTH TO REENTER THE PUBLIC SCHOOL SYSTEM. THE TREATMENT COMPONENT MUST ALSO CONTAIN **DRUG TREATMENT** AND **PREVENTION, INDIVIDUAL AND GROUP COUNSELING, JOB TRAINING, PEER MEDIATION** AND **VIOLENCE PREVENTION.**

8. **JOB TRAINING** FOR ALL COMMITTED YOUTH. THIS REQUIRES SYSTEMS TO WORK CLOSELY WITH COMMUNITY ORGANIZATIONS SUCH AS **YOUTHBUILD AND JOB CORPS**, TO ENROLL YOUTHS IN THEIR PROGRAMS, WHICH ARE DESIGNED SPECIFICALLY FOR UNDERSKILLED URBAN YOUTH. THE SUCCESS OF A YOUTH OFTEN DEPENDS UPON THE ABILITY OF THE SYSTEM TO RETURN THE YOUTH TO SCHOOL OR TO ASSIST HIM IN SECURING A ~~JOB~~.

9. **A REVOCATION POLICY**, WHICH PROVIDES FOR THE ABILITY OF A SYSTEM TO RETURN A YOUTH TO A PROGRAM WHEN HE/SHE IS FAILING IN THE COMMUNITY, WITHOUT HAVING TO GO THROUGH THE COURT SYSTEM. AN INTERNAL HEARING CAN BE HELD THROUGH AN APPOINTED HEARING OFFICER. THIS POLICY CREATES THE KIND OF

FLEXIBILITY THAT IS CRITICAL IN FOLLOWING THROUGH IN THE REINTEGRATION PHASE OF A YOUTH'S COMMITMENT.

10. AN INTENSIVE, PRE-SERVICE TRAINING PROGRAM, FOR ALL THOSE WHO WORK DIRECTLY WITH YOUTH, AND A MODIFIED VERSION FOR THOSE IN NON-DIRECT CARE POSITIONS. SPECIFIC TRAINING MUST TAKE PLACE IN THE AREAS OF SEX OFFENDER TREATMENT, SUICIDE PREVENTION, CRISIS MANAGEMENT, MENTAL HEALTH, AIDS AND ITS PREVENTION, DRUG TREATMENT, AND TEENAGE PREGNANCY PREVENTION. ADDITIONAL TRAINING ON HOW TO DEAL EFFECTIVELY WITH THE MEDIA AND TO USE THEM AS A RESOURCE SHOULD ALSO BE INCLUDED.

OUR EXPERIENCE WITH ADOLESCENTS CONSISTENTLY REAFFIRMS THAT THE STEREOTYPICAL VIOLENT JUVENILE OFFENDER IS NOT OMNIPRESENT; RATHER, WE OBSERVE THE HETEROGENEITY OF JUVENILE OFFENDERS WHO ENTER THE SYSTEM. THEY RANGE DRAMATICALLY IN TERMS OF OFFENSE SERIOUSNESS, RISK OF RECIDIVISM, AND SERVICE NEEDS. IN RESPONDING TO THOSE OFFENDERS, TOO MUCH INTERVENTION, WASTES RESOURCES AND OVER-LABELS YOUTHS; TOO LITTLE THREATENS PUBLIC SAFETY AND PROLONGS THE PROBLEM BEHAVIORS THAT THE SYSTEM SEEKS TO CORRECT. FOR MOST OFFENDERS, TREATMENT WITHOUT BEHAVIORAL SUPERVISION IS AS FUTILE AS BEHAVIORAL SUPERVISION OR STERILE INCAPACITATION WITHOUT TREATMENT SERVICES. THE COMPLEXITY OF THE PROBLEMS OF JUVENILE DELINQUENCY REQUIRES THAT A BALANCED SYSTEM BE IN PLACE - ONE THAT RECOGNIZES COMPETING PRIORITIES OF REHABILITATION, OFFENDER RISK, AND OFFENSE

SERIOUSNESS. AND IS THEREFORE ACCOUNTABLE BOTH TO OFFENDERS AND TO PUBLIC SAFETY DEMANDS AT THE SAME TIME.

Mr. SCHUMER. Thank you, Mr. Loughran. Let me start with you, because your program is very interesting to me. First, let me ask you, are these community-based facilities, or are they detention facilities?

Mr. LOUGHRAN. Well, there is a range. There are secure treatment programs—which, by the way, most of them are in a community, they are locked, they are hardware secure. The kids do not leave. They are not upstate—I am familiar, and you are, with the New York system.

Mr. SCHUMER. Right.

Mr. LOUGHRAN. Many city kids go upstate 150 miles to this large institution. In Massachusetts, in Boston, there are secure programs for the Boston kids, but there are also——

Mr. SCHUMER. And that is so they can be near their families, but they are secure facilities, not halfway houses and things like that.

Mr. LOUGHRAN. That is right. But there are also community group homes that are on the way out; or for the kid who doesn't pass that offense threshold.

Mr. SCHUMER. Right. That makes sense. What is the cost per kid?

Mr. LOUGHRAN. The cost-effectiveness lies in the entire system.

Mr. SCHUMER. I understand.

Mr. LOUGHRAN. To lock a kid up, it is $60,000 a year, but only 20 percent of the kids are locked up.

Mr. SCHUMER. $60,000, that is double the cost of an adult prisoner; that is because you have more——

Mr. LOUGHRAN. Services, very strong education, counseling and the rest.

Mr. SCHUMER. OK. Go ahead.

Mr. LOUGHRAN. So group homes, about $40,000. Again, many of the kids in group homes would be in training schools costing $45,000 to $55,000. The bang for the buck comes in this model called outreach and tracking or casework supervision where half of the kids are—a good 900 of the 182,000 DYS kids. They are home—about 300 of them have only one worker——

Mr. SCHUMER. Only 300—2,000 all together, but only 300 are in that first——

Mr. LOUGHRAN. And then the remainder are home with a DYS caseworker, who has only 21 cases.

Mr. SCHUMER. You still have a family court in Massachusetts, right?

Mr. LOUGHRAN. It is juvenile court.

Mr. SCHUMER. Let me ask you a couple of hypotheticals.

I must say, in all due respect, some of the witnesses on the other panel seem not to believe in any punishment at all. I don't agree with them, and they are never going to get anywhere. I would say to the assembled masses here, many of whom share that point of view, you are not going to get anywhere. The public is not going to accept no punishment for the most serious types of crimes. Plain and simple they are not going to accept this, nor, in my view, should they.

The kid in Prospect Park who murders someone for a bicycle and could get no more than 5 years is a problem. That is wrong. This was a heinous, horrible crime. But I will get to that as we go

through this and have other hearings. I don't want to lay my hand down now. But what I am really looking for are programs that work.

I think my average constituent wants to see somebody who is dangerous and violent, off the streets and punished. But I think they have far less objection, and probably would even support, programs that work. So, for instance, I am able to get lots of money for drug treatment by putting drug treatment programs in prisons. These programs, they actually work better in the prisons than on the outside.

So just—now you have 2,000 people in this program?

Mr. LOUGHRAN. There are about 2,000 kids—1,800 to 2,000.

Mr. SCHUMER. Do you have fewer kids because this program is more expensive, or that hasn't been a constraint? That seems like a relatively small number for a State with 10 million, 8 million people to have.

Mr. LOUGHRAN. It is less than 6 million people. There are about 20,000 arraignments a year. On average, there are about 800 kids get committed. It has gone up a little bit.

Mr. SCHUMER. What happens to the other 19,200?

Mr. LOUGHRAN. Either found not guilty, continued without a finding, or probation.

Mr. SCHUMER. Who is the typical kid in your system? What is the lowest level crime they have committed?

Mr. LOUGHRAN. Property offenses.

Mr. SCHUMER. Burglary?

Mr. LOUGHRAN. Burglary, B and E's and the rest.

Mr. SCHUMER. OK. A while ago we studied a system of graduated sanctions in Quincy, MA. If the graduated sanctions don't work for a low-level crime, you are given more severe sanctions.

Mr. LOUGHRAN. Right.

Mr. SCHUMER. Have they spread the system of graduated sanctions to Boston, MA.

Mr. LOUGHRAN. That is one of the finest programs.

Mr. SCHUMER. You bet. We put money in the crime bill to let other localities create similar programs.

Mr. LOUGHRAN. We find that those courts—probation and courts are not uniform in Massachusetts, and they are not anywhere; and that is a good example of a good court. There are, unfortunately, examples of courts where they violate a kid's probation, very quickly put him into our system and expect him to be locked up; and it is a minor property offense, but now he violated his probation.

I feel the more money you put in at that entry level—your points in the beginning were very well taken. There has got to be a sanction. If a kid goes into court and there is no sanction, a tangible sanction——

Mr. SCHUMER. Do you agree with that, Dr. Krisberg?

Dr. KRISBERG. Absolutely.

Mr. SCHUMER. Because clearly Judge Mitchell and Ms. Wallace did not. They really didn't believe in any sanctions at all.

Mr. LOUGHRAN. Well, I think they—I don't want to put words in their mouths. Sometimes the sanctions are disproportionate.

Mr. SCHUMER. I found that very troubling, I really did.

Mr. LOUGHRAN. Sometimes the sanctions are disproportionate.

Mr. SCHUMER. That is not the issue. The issue is whether a kid should go away after doing something wrong and feel that the system is toothless. I believe kids should feel that the system has teeth. But I also feel we should take our resources and try to use them to turn kids for the better.

There are some kids that will never reform and in my view, you can put them away forever. That is the price that they must pay. But there are a lot of kids in the middle, there are a lot of kids who could go either way.

Let me ask you a question. John Smith, a 15-year-old, is arrested; first-time burglary in Quincy, MA. He has been arrested before for some lower-level type of crimes.

Mr. LOUGHRAN. Knowing that court, they may very well keep him on probation under the court's supervision, and they may put him in an intensive supervision probation, and that he has to pay restitution.

Mr. SCHUMER. Work or something like that. That doesn't work and John Smith commits a second burglary.

Mr. LOUGHRAN. Second, they may keep him; but third, they would definitely send him to us. He would be evaluated for the system, by our classification system. He may not pass the threshold for 1 of those 13—1 of the 13-, 15-bed secure treatment programs. They really are reserved for your most serious.

Mr. SCHUMER. So where would he go?

Mr. LOUGHRAN. He would go to the Opramago group home, it is a 15—a 17-bed group home that is—it is open inasmuch as if you wanted to run away, you could. They have very few escapes because you have a good staff-to-youth ratio and you have a culture in the program.

Mr. SCHUMER. Does he go to school?

Mr. LOUGHRAN. No. In that program. That is why they are a little more expensive.

Mr. SCHUMER. But he could go out on the street any time?

Mr. LOUGHRAN. No, he can't go out on the street any time. If he does, he is in violation of the rules, and he could go into one of the secured—there are group excursions in the community for recreational purposes.

Mr. SCHUMER. OK. Supervised.

Mr. LOUGHRAN. And that would be about a 9-month program, and he would go back to the community and his caseworker would stay involved.

Mr. SCHUMER. Would some kids have to stay 18 months while others might get out in 6?

Mr. LOUGHRAN. If it is more than 9 months in a group home, we try——

Mr. SCHUMER. If 9 months doesn't work with a group home, then what happens?

Mr. LOUGHRAN. They may need something more serious. They try to do it also around an academic year.

Mr. SCHUMER. Are there some people in your group homes in Chelsm, or in the Chelsm type homes that should go to more restricted facilities, but can't because you don't have enough room.

Mr. LOUGHRAN. Honestly, in the last 3 years that I was there, yes. It was a domino effect. The budget was cut, unfortunately, because of the budget crisis.

Mr. SCHUMER. The system will break down if that happens.

Mr. LOUGHRAN. Right. What happened is, three kids at the home got killed last year by other kids who brought the spotlight on the agency. Guess what, the agency got $17 million this year. Isn't it sad that that is the way we react?

Mr. SCHUMER. We go through that often—we put a traffic light in front of a school only after a kid is hurt, unfortunately.

OK. The costs you went over. I don't think you have enough places for all of the kids who should be in the program.

Mr. LOUGHRAN. Well——

Mr. SCHUMER. Two thousand just intuitively strikes me as too little in a State——

Mr. LOUGHRAN. By the way, it was 1,800. It went up a couple hundred more kids in the last couple of years.

Mr. SCHUMER. But it is not enough?

Mr. LOUGHRAN. Everyone agrees that the $17 million that the agency got this year will allow them to develop—not just secure, but again, to develop that range of continuum, so they are recommending that.

You are right on the lack of resources.

Mr. SCHUMER. Now let's go to Quincy again.

Mr. LOUGHRAN. OK.

Mr. SCHUMER. The kid who committed the burglary the first time at age 15 and was put on some type of intensive supervision and restitution commits an armed robbery when he is 16.

Mr. LOUGHRAN. Chances are he would get committed to the department of youth services. He would be considered for a secure treatment program.

Mr. SCHUMER. He still goes to you?

Mr. LOUGHRAN. Well, they could keep him on probation. My guess is——

Mr. SCHUMER. They don't send him to the adult court?

Mr. LOUGHRAN [continuing]. 14- to 17-year-old. Seventeen is the automatic cutoff in Massachusetts. You go adult at 17.

Mr. SCHUMER. Even if you were signed in at the juvenile level?

Mr. LOUGHRAN. Right, right. If you commit a new offense.

Mr. SCHUMER. So if you are 15 and you commit a serious murder——

Mr. LOUGHRAN. If you are 15 and you do a serious murder—we are not an automatic waiver State, so there has to be a transfer hearing. Judge Mitchell would weigh the evidence, the amenability to treatment, and they would say yes or no. They would get transferred to the adult system. He would be indicted in the adult court.

By the way, very few kids—even with changes in the law, very few, less than 30 kids a year are waived into the adult system.

Mr. SCHUMER. For serious crimes, the most heinous crimes, is what Dr. Krisberg said true in Massachusetts, that kids get as long sentences as they would if they were adults?

Mr. LOUGHRAN. If it is murder, they would. The laws have been changed so that there is a split sentence now. And if a juvenile is retained in juvenile court, it is a split sentence in the juvenile facility until the youth is 21 and then he goes for 10 or 15 in the adult system, depending on murder first degree or second degree. Armed

robbery, rape, for the ones committed to DYS, it might be—I mean, I just don't know what those standards are in the adult system.

Mr. SCHUMER. Tell me what they offer you. A 15-year-old has committed a few burglaries and is now arrested for an armed robbery. That kid is probably somebody who I don't want back out on the streets after a year or two, even if he does have a 50-percent chance of rehabilitation.

Mr. LOUGHRAN. I think he would be back out, not alone, but back out in the community program after 2 years, after 1 or 2 years.

Mr. SCHUMER. And you haven't had problems with that?

Mr. LOUGHRAN. You do have problems, but they are the exception rather than the rule. It is not that the system is falling apart because of that.

Mr. SCHUMER. I know. Again my bias may be somewhat different than yours. But the first people we are out to protect are the innocent people on the streets who might get killed by this person.

Mr. LOUGHRAN. Agreed. But experience has shown that if you could gradually—it is not that you are springing him after 2 years with no supervision. That is what I think people object to. If you are locked up in an upstate facility and you get carfare to go home and you have no support system, that is a dangerous system.

Mr. SCHUMER. Have you weathered the situation where someone who committed a serious crime got 2 years, was under one of your supervised situations, and then murdered someone in a dastardly way?

Mr. LOUGHRAN. We have had—not a lot, but we had one last year, yes.

Mr. SCHUMER. Is there a public outcry and aren't there demands by the public to change the rules?

Mr. LOUGHRAN. There were demands around transferring kids into the adult, making it easier to transfer kids into the adult system, even if the kid was not committed to our agency. There really have been no universal answers by those judges, prosecutors——

Mr. SCHUMER. I am talking about the public.

Mr. LOUGHRAN [continuing]. And the media and the public to undo the model that has been developed.

Mr. SCHUMER. So, rather, what they would demand is for a kid who commits a third armed robbery to get a mandatory sentence.

Mr. LOUGHRAN. Or waive the kid to the adult system if that is the case.

Mr. SCHUMER. I think I would rather have them stay in your system, off the top of my head, but mandate the sentance to last for a longer period of time.

Where the left goes wrong here is, in my judgment, where they don't demand punishment or they think punishment is a last resort. It is counterintuitive. The average guy on the street's opinion has a lot of wisdom to it that sometimes intellectuals discount.

Mr. LOUGHRAN. We lost our credibility over the years when we had to release kids at 18, regardless, and we have changed those laws in the last couple of years. Now, I believe in a cutoff in the juvenile system. Twenty-one is the—California's is 25, but it is an adult system. And so we—we go back to court at 18. If we think the kid is still dangerous, we go back to court; we prove he is phys-

ically dangerous, the court gives us permission to keep him until he is 21.

Mr. SCHUMER. And the recidivism figures that Dr. Krisberg cited for Massachusetts, are impressive, but also speak against Antoine being the rule, as Ms. Wallace said. Is the correct figure about one out of five?

Mr. LOUGHRAN. That is right. It may have gone up, they haven't studied, it may have gone up over the last couple of years.

Mr. SCHUMER. One other question. A question I asked the other panel: if a 15-year-old is arrested for possession of a gun, why shouldn't that be public?

Mr. LOUGHRAN. I believe juvenile records should be opened.

Mr. SCHUMER. Mr. Loughran, you and I are going to talk a lot.

Mr. LOUGHRAN. Period. I mean, I just—it does a disservice to the system to shroud it in secrecy.

Mr. SCHUMER. It is antediluvian, in my opinion, I must say.

Do you disagree, Dr. Krisberg?

Dr. KRISBERG. No, I agree.

Mr. SCHUMER. You think records should be open, too?

Dr. KRISBERG. I was quoted in the New York Times supporting the Governor of New Jersey's position that we open juvenile court records. I don't think it serves any purpose. I think confidentiality in the juvenile court is a relic of an era when there were just small towns and the juvenile court operated in teeny little villages.

Mr. SCHUMER. OK. What do you think of the comments of Judge Mitchell who was quite upset at the thought of opening up these records. Judge Mitchell deals with this issue every day and he seems like a decent, honorable person.

Dr. KRISBERG. Well, I have been hearing a number of juvenile court judges taking the opposite position, for example, Judge Len Edwards of Santa Clara, Steve Harold of Portland, OR. I think the judges are split on this issue. There may be some questions around employment discrimination law down the road, there may be some issues having to do with should the newspapers be able to publish the names of kids who just get arrested.

Mr. SCHUMER. That is quite different.

Dr. KRISBERG. Yes, that is different. But as to the openness of the juvenile court, I would open the doors, bring in the cameras and let the public see what goes on.

Mr. SCHUMER. You bet. You will get a lot better juvenile system than if you keep it all secret, which is what Mr. Murphy was saying.

Let's see what else I have. What you do you think, Dr. Thornberry and Dr. Krisberg, of the idea of making sure kids receive fairly long sentences for serious, particularly violent, repetitive criminals, but doing it in a different type of facility than the adult facilities?

Dr. THORNBERRY. I think it is more important to increase the length of time that the children receive services. Some of that is punishment, and I have no difficulty with increasing levels of punishment to make it commensurate with the nature and seriousness of the offense. But I think what we don't do—we don't do the youth any good, we don't protect society to increase the level of punish-

ment, and then when we leave the facility, drop that case, so that there is no more——

Mr. SCHUMER. Right. I don't know too much about the juvenile but I know quite a bit about drug treatment. And again, even in the prisons where it works with the same kind of ratios you are talking about in Massachusetts, if you don't include aftercare you just lose all your gains. I understand that.

What about you, Dr. Krisberg?

Dr. KRISBERG. I would respond in a similar way. You know, we—the average time it takes you to finish college is 4 years, but some people need 5. You know, I think the issue should be the amenability of this person to return, particularly for violent offenders, to a law-abiding life.

But I want to pick up on what you said earlier, questioning some of the numbers on length of stay. Let me just give you some California numbers.

Mr. SCHUMER. OK.

Dr. KRISBERG. We are going to compare persons who get sentenced to the California Youth Authority and to the California Department of Corrections for the same crime.

Mr. SCHUMER. The same crime. Give me some high-level crimes.

Dr. KRISBERG. Homicide, 60 months in the California Youth Authority, 41 months in the California Department of Corrections.

Mr. SCHUMER. This is served time, not sentenced time, because obviously in the adult system they would be sentenced to something like 15 or 20 years.

Dr. KRISBERG. Which is, upon release, how much time served? Kidnapping, 49 months in the Youth Authority; 42 in the Department of Corrections. Robbery, 30 months in the Youth Authority; 25 months in the Department of Corrections. Assault, 29 months in the Youth Authority; 21 months——

Mr. SCHUMER. The average assault in California serves 29 months?

Dr. KRISBERG. In the Youth Authority; 21 months in the prison system. So we have already got—and California is on the upper end.

My analysis around the country is that, by and large, with the exception of occasional quirks—we had one in Rhode Island where—a quirky law that they subsequently have fixed. By a large, for a violent crime, a juvenile will do more time; because the adult systems are overcrowded, they are early-releasing people. So, in effect, what we have is an adult system that is meting out less time.

Mr. SCHUMER. Are they more overcrowded than the youth systems? Why are the adult systems more overcrowded than the youth systems?

Dr. KRISBERG. Well, we have a massive policy of incarcerating drug offenders, and that has overloaded our adult systems. So while juvenile facilities are, they are not nearly as crowded as our prisons and jails. We are not talking about 20 States emergency-releasing inmates in the juvenile system, but it is the case in the adult system.

Mr. SCHUMER. And that is mainly because of the drug offenders?

Dr. KRISBERG. For example, in Florida, because of the——

Mr. SCHUMER. We are trying to change that in the crime bill. We are putting in tougher sentences for the violent, repeat criminal, but we are providing a safety valve for those low-level offenders who receive mandatory 5-year sentences for drug offenses.

Dr. KRISBERG. Which is a very smart way of going about it. You know, I don't have any problems with punishment as a concept. I think public safety should guide how the juvenile justice operates. That will restore confidence.

The thing that impresses me about Massachusetts is that it is focused on public safety and it, in fact, reduces it. California——

Mr. SCHUMER. No, it increases it.

Dr. KRISBERG. Yes, increases public safety.

In California, we mete out a lot of punishment, we lock up more kids than any other State, but nobody in the city of Los Angeles or the cities of Oakland or San Francisco thinks that we have a safe State.

Mr. SCHUMER. In all fairness, Dr. Krisberg, probably no one does in Boston either. The argument is that we have locked a lot of people up already.

I have had this constant battle. The left says we have locked a lot of people up, so crime goes up, so we shouldn't lock people up; and the right says, we have funded lots of prevention programs in the 1960's and 1970's and crime went up. You know, both are sophistry; neither of them would standup to the slightest scientific test.

Some programs are good on punishment and some are good on prevention and some are junky; but as there is no control, you don't know if things would have been worse or better without the programs.

What we are trying to do on this committee, I think what we have done on our first crime bill on the adult level and what we are trying to do in juvenile areas is to find the things that work, without an ideological bias or perspective. I mean, I go nuts with ideologues on either the right or the left who can't look at what really works, what really makes people safer. Because what you have oftentimes—and we saw it on the first panel to some extent—is that the crime debate becomes not one of efficacy, making the streets safer, but one of values. People are each saying here are my values, here are my values; that gets you nowhere. That is what this Congress has done for 12 years, and I am trying to steer it away from that.

All right. Does anyone else want to say anything? This was very helpful to me.

Mr. LOUGHRAN. Just a minor point. I think sometimes the criminal justice system is expected to do the impossible. We really can't change that——

Mr. SCHUMER. Well, there you agree with Mr. Murphy.

Mr. Murphy and Dr. Thornberry said, and I tend to agree with them, that if you don't get in there early, all the stuff at the end is much harder to do; and we should be getting in there early.

But you know, I didn't get a chance to ask Mr. Murphy; it isn't our jurisdiction. No one knows what to do. No one really knows what to do. I sat in a school in Bed-Stuy, I wanted to see what was going on in there. The education the kids were getting in there was better than the one I got. The teachers were better, the school room

was pretty good, and there were fewer kids in the classroom, but you know when I went home, my mother was home and she said, do your homework.

And the 8:30 to 3:30 these kids had was the best part of their day, and they were good students. I followed second grade and before I walked in there, I was not sure what it would be like, but they were just like, the kids in my class, everyone was raising their hands.

But my best teacher and probably your best teachers were your parents. That was 80 percent of it; 20 percent is everything else.

No parents, or a 13-year-old mother, what do you do?

So at least we are asking the right questions. But I haven't found anyone who gives the right a good answer. I think the idea of changing the welfare system, is right at the very edge. What we really need is to give each kid a parent.

Dr. KRISBERG. I think that is right. My last comment would be if we want to stop the teenage carnage, we have to focus on guns. Not just gun control laws, but we need, for the first time in this country's history, a serious enforcement policy—planned, funded, and done by somebody who knows how to do it well.

Mr. SCHUMER. There is simply, Dr. Krisberg, a problem of resources. I find in most large cities they pick up a kid with a gun and the kid gets probation, is that true in Massachusetts?

Mr. LOUGHRAN. Yes. Yes. It is changing.

Mr. SCHUMER. Again, there are the problems of once you pick them up, where do you put them, what do you do with them; but right now we do nothing.

Dr. KRISBERG. I agree with that, but I think we also have to talk about enforcing Federal laws on gun sales.

Mr. SCHUMER. Oh, yes. It is called the Schumer-Bradley bill. Once we pass assault weapons, get everyone in California to support it.

Dr. KRISBERG. Stop interstate trafficking, getting illegal weapons. That is the kind of plan that we need. And if you want to know where the money can come from, I will be happy to sit down with you and go through the drug budget, so I can show you where the money can be found.

Mr. SCHUMER. That money is easy. It is the incarceration money that is hard. My admonition, for whatever it is worth, is don't be shy; in doing the things you are trying to do, don't act like punishment is a horrible thing that we should avoid at all costs. I think that is wrong, and I think it helps create an impression that what you are doing is not really what the public wants when, in reality, it may be what it is.

OK, I want to thank, first, Melanie Sloan, who put together this hearing. She did a great job. I want to thank Andrew Cowin from the minority, my colleagues who came, and Julie Bryan, the sterographer.

This hearing is adjourned.

[Whereupon, at 1:20 p.m., the subcommittee adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING

OJJDP BULLETIN
Office of Juvenile Justice and Delinquency Prevention

John J. Wilson, Acting Administrator

May 1994

How Juveniles Get to Criminal Court

Melissa Sickmund, Ph.D.

All States allow juveniles to be tried as adults in criminal court under certain circumstances

A juvenile's case can be transferred to criminal court for trial in one of three ways—judicial waiver, prosecutorial discretion, or statutory exclusion from juvenile court jurisdiction. In any given State, one, two, or all three transfer mechanisms may be in place.

Judicial waiver. In all States except Nebraska and New York, juvenile court judges may waive jurisdiction over a case and transfer it to criminal court (graphic 1). Such action is usually in response to a request by the prosecutor. However, in several States, juveniles or their parents may request transfer. In many States, statutes limit judicial waiver by age, offense, or offense history. Often statutory criteria, such as the juvenile's amenability to treatment, must also be considered.

An estimated 9,700 juvenile delinquency cases were transferred to criminal court by judicial waiver in 1991. Waivers increased 39% from 1987 to 1991. Increases in waivers varied substantially across offense categories. The number of drug cases judicially waived increased 152%; waived person offense cases increased 65%. Waiver increases were much smaller for property and public order cases.

Percent Change in Delinquency Cases Judicially Waived to Criminal Court

Offense	Number of Cases 1987	Number of Cases 1991	Percent Change
Delinquency	7,000	9,700	39%
Person	2,000	3,200	65
Property	3,900	4,200	10
Drugs	600	1,600	152
Public Order	500	600	21

Note: Detail may not add to totals because of rounding.

Judicially waived cases constituted 1.5% of the cases formally processed in juvenile courts in 1991. Drug cases were more likely to be judicially waived than those in other offense categories.

Percent of Petitioned Delinquency Cases Judicially Waived to Criminal Court

Offense	1987	1988	1989	1990	1991
Delinquency	1.3	1.2	1.4	1.3	1.5
Person	2.0	1.9	2.0	2.0	2.3
Property	1.3	1.2	1.2	1.0	1.1
Drugs	1.5	1.5	2.9	2.5	4.0
Public Order	0.5	0.5	0.5	0.5	0.6

The offense profile of waived cases changed between 1987 and 1991. Drug and person offense cases each accounted for a greater proportion of waived cases in 1991 than in 1987.

Offense Profile of Judicially Waived Cases

Offense	1987	1991
Person	28%	34%
Property	55	44
Drugs	9	16
Public Order	7	6

Note: Detail may not total 100% because of rounding

Prosecutorial discretion. In some States, prosecutors are given the authority to file certain juvenile cases in either juvenile or criminal court under concurrent jurisdiction statutes. Thus, original jurisdiction is shared by both criminal and juvenile courts. Prosecutorial discretion is typically limited by age and offense criteria (graphic 2). Often concurrent jurisdiction is limited to charges of serious, violent, or repeat crimes. Juvenile and criminal courts often share jurisdiction over minor offenses such as traffic, watercraft, or local ordinance violations, as well.

There are no national data at the present time on the number of juvenile cases tried in criminal court under concurrent jurisdiction provisions. There is, however, some indication that in States allowing such transfers, they may outnumber judicial waivers. In one State with both judicial waiver and concurrent jurisdiction provisions, in 1981 there were two cases filed directly in criminal court for every one judicially waived. By 1992 there were about 10 direct filings for every case judicially waived.

BOSTON PUBLIC LIBRARY
3 9999 05705 8750

Graphic 1: Statutorily defined age and offense provisions for judicial waiver of juveniles to criminal court, 1992

Key: ■ Provision is specifically mentioned in State's Juvenile Code.
▨ Provision applies only if the other condition similarly shaded is also met.
See Example below for information on how to read the graphic.

State	Minimum age	Any criminal offense	Certain offenses: Murder	Certain offenses: Person offenses	Certain offenses: Property offenses	Certain offenses: Drug offenses	Certain offenses: Weapon offenses	Certain offenses: Felony offenses	Certain offenses: Capital crimes	Previous: Delinq. adjudication(s)	Previous: Criminal conviction
AL	14	14									
AK											
AZ											
AR	14		14	14				16	14		
CA	16	16									
CO	14							14			
CT	14							14		▨	
DE	14	16						14			
DC		16[a]					■	15			
FL		14									
GA	13	15			15				13	▨	
HI	16							16			
ID	14	14									
IL	13	13									
IN		14	10					16			▨
IA	14	14									
KS	16	16						14			
KY	14							14	14		
LA	15			15	15						
ME			■					■			
MD		15							■		
MA	14			14				14[b]			
MI	15							15			
MN	14	14									
MS	13	13									
MO	14							14			
MT	12		12	12	16	16	16				
NV	16							16			
NH								■			
NJ	14	14	14	14	14	14	14			▨	
NM	15		15	16	16		16	16			
NC	14							14			
ND	14			14							
OH	15							15			
OK								■			
OR	15		15	15	15			15			
PA	14							14			
RI								■			
SC		16		■	14					▨	
SD		■									
TN	14	16	14	14							
TX	15							15			
UT	14							14			
VT	10		10	10	10						
VA	15							15			
WA	15			17				15			
WV			■	■	■			16		▨	
WI	14	16	14								
WY		■									

Example: Alabama permits judicial waiver for any delinquency case involving a juvenile 14 or older. Connecticut permits waiver of juveniles age 14 or older charged with certain felonies if they have been previously adjudicated delinquent.

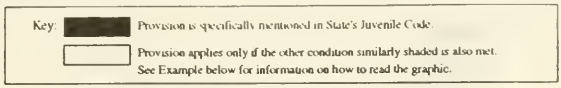
Note: Ages in the minimum age column may not apply to all the restrictions indicated, but represent the youngest possible age at which a juvenile may be judicially waived to criminal court. For States with a blank minimum age cell, at least one of the offense restrictions indicated is not limited by age. When a provision is conditional on previous adjudications, those adjudications are often required to have been for the same offense type (e.g., class A felony) or a more serious offense.

[a] Waiver conditional on the juvenile being under commitment for delinquency.

[b] Waiver conditional on a previous commitment to the Department of Youth Services.

Source: Szymanski, L. (1993) *Waiver/transfer/certification of juveniles to criminal court: Age restrictions-crime restrictions (1992 update)*. Pittsburgh, PA: National Center for Juvenile Justice.

Graphic 2: Serious offenses for which State statutes give prosecutors discretion to file in criminal or juvenile court and related age restrictions, 1992



State	Minimum age	Any criminal offense	Murder	Certain offenses: Person offenses	Certain offenses: Property offenses	Certain offenses: Drug offenses	Certain offenses: Weapon offenses	Felony offenses	Capital crimes	Previous felony adjudication(s)
AR	14		14	14				16	14	
CO	14							14		
DC	16		16[a]	16[a]	16[a]					
FL		16[b]						16	c	
GA										
LA	15			15	16					
MI										
NE		16								
NH										
SD										
UT	16		16					16	16	
VT	16	16								
WY		13								

Example: In Florida prosecutors have discretion to file in criminal court those cases involving juveniles 16 or older charged with felony offenses or misdemeanors if they have prior felony adjudications. Juveniles of any age charged with capital crimes are tried in criminal court following grand jury indictment. In New Hampshire prosecutors may file in criminal court any juvenile case involving a felony charge.

Note: Ages in the minimum age column may not apply to all the restrictions indicated, but represent the youngest possible age at which a juvenile may be judicially transferred to criminal court. For States with a blank minimum age cell, at least one of the offense restrictions indicated is not limited by age. When a provision is conditional on previous adjudications, those adjudications are often required to have been for the same offense type (e.g., class A felony) or a more serious offense.

[a] Statutory exclusion language interpreted as concurrent jurisdiction provision.
[b] Provision applies to misdemeanors only.
[c] Provision is conditional on grand jury indictment.

Source: Szymanski, L. (1994) *Concurrent jurisdiction (1992 update)*. Pittsburgh, PA: National Center for Juvenile Justice.

Statutory exclusion. Legislatures transfer large numbers of young offenders to criminal court by statutorily excluding them from juvenile court jurisdiction. Although not typically thought of as "transfers," large numbers of youth under age 18 are tried as adults in the 11 States where the upper age of juvenile court jurisdiction is lower than 18. Nationwide, an estimated 176,000 cases involving youth under the age of 18 are tried in criminal court each year because they are defined as adults under State law.

Many States exclude certain serious offenses from juvenile court jurisdiction—some also exclude juveniles who have been previously waived or convicted in criminal court (graphic 3). State laws typically also set age limits for excluded offenses. The serious offenses most often excluded are murder (and other capital crimes) and other offenses against persons. Several States exclude juveniles charged with felonies if they have prior felony adjudications or convictions. Minor offenses, such as traffic, watercraft, fish or game violations, are often excluded from juvenile court jurisdiction as well. There are no national data at the present time on the number of juvenile cases tried in criminal court as a result of these types of statutory exclusions.

In many States juveniles tried in criminal court may receive dispositions involving either criminal or juvenile court sanctions. Several States also have provisions for transferring "excluded" or "direct-filed" cases from criminal court to juvenile court under certain circumstances. This is sometimes referred to as "reverse" waiver or transfer.

The upper age of juvenile court jurisdiction in delinquency matters is defined by State statute

Oldest age for original juvenile court jurisdiction in delinquency matters

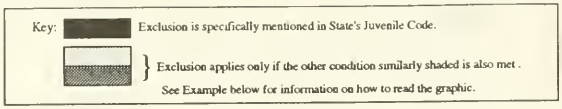
Fifteen	Sixteen	Seventeen		
Connecticut	Georgia	Alabama	Kansas	Ohio
New York	Illinois	Alaska	Kentucky	Oklahoma
North Carolina	Louisiana	Arizona	Maine	Oregon
	Massachusetts	Arkansas	Maryland	Pennsylvania
	Michigan	California	Minnesota	Rhode Island
	Missouri	Colorado	Mississippi	South Dakota
	South Carolina	Delaware	Montana	Tennessee
	Texas	District of Columbia	Nebraska	Utah
			Nevada	Vermont*
		Florida	New Hampshire	Virginia
		Hawaii	New Jersey	Washington
		Idaho	New Mexico	West Virginia
		Indiana	North Dakota	Wisconsin
		Iowa		Wyoming

- In many states the juvenile court has jurisdiction over young adults who committed offenses while they were juveniles.
- Several states also have minimum ages of juvenile court jurisdiction in delinquency matters — ranging from 7 to 12.

* In Vermont the juvenile and criminal courts have concurrent jurisdiction over all 16- and 17-year-olds.

Source: Szymanski, Linda. (1994) *Upper age of juvenile court jurisdiction statutes analyses*. Pittsburgh, PA: National Center for Juvenile Justice.

Graphic 3: Serious offenses excluded from juvenile court by State statute and related age restrictions, 1992



State	Minimum age	Certain offenses: Murder	Other person offenses	Property offenses	Drug offenses	Weapon offenses	Felony offenses	Capital crimes	Previous: Felony adjudication(s)	Previous: Criminal conviction
CT	14	14					14			
DE										
GA	14	14[a]	14[a]	15						
HI	16	16					16			
ID	14	14	14		14					
IL	15	15	15		15	15	15[b]		b	
IN		16	16			16				
KS	16		16[a]	16[a]			16			
LA	15	15	15							
MD	14		16			16		14		
MN	14						14			
MS										
NV										
NY	7	13	13	13			7			
NC	14							14		
OH										
OK	16	16	16	16	16	16				
PA										
RI	16				16					
VT	14	14	14	14						

Example: In North Carolina, juveniles age 14 or older charged with capital crimes are excluded from juvenile court jurisdiction. In Ohio, juveniles of any age charged with murder are excluded if they have prior criminal convictions, as are those charged with certain felonies who have prior felony adjudications.

Note: The ages given in the minimum age column may not apply to all the exclusions indicated, but represent the youngest possible age at which a juvenile may be excluded from juvenile court. For States with a blank minimum age cell, at least one of the exclusions indicated is not restricted by age. When an exclusion is conditional on previous adjudications, those adjudications are often required to have been for the same offense type (e.g., class A felony) or a more serious offense.

[a] Exclusion applies only to juveniles charged with offenses while in custody in juvenile institutions.
[b] Exclusion of felonies is also conditional on the offense being "committed in furtherance of criminal activity by an organized gang."

Source: Szymanski, L. (1993) *Statutory exclusion of crimes from juvenile court jurisdiction (1992 update)* Pittsburgh, PA: National Center for Juvenile Justice.

Delinquency case data are from the National Juvenile Court Data Archive's *Juvenile Court Statistics 1991* report. The report will be available in the summer of 1994 from the Juvenile Justice Clearinghouse (800/638-8736). Analyses reflect statutory provisions in place at the end of 1992. Several States amended their statutes regarding waiver, concurrent jurisdiction, or exclusion during 1993. In addition, at least 19 States have proposed legislation in 1994 in one or more of these areas.

This bulletin was prepared by Melissa Sickmund, National Center for Juvenile Justice. The material was developed for the forthcoming *National Report on Juvenile Offending and Victimization*, funded by OJJDP through grant #90–JN–CX–K003. Barbara Allen-Hagen, Social Science Analyst in OJJDP's Research and Program Development Division, served as Program Manager.

Points of view or opinions expressed are those of the author and do not necessarily represent the official position or policies of OJJDP or the U.S. Department of Justice.

ISBN 0-16-046716-0

9 780160 467165 90000

85–752 (172)